TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 126.

JOHN A. LOMAX, PLAINTIFF IN ERROR,

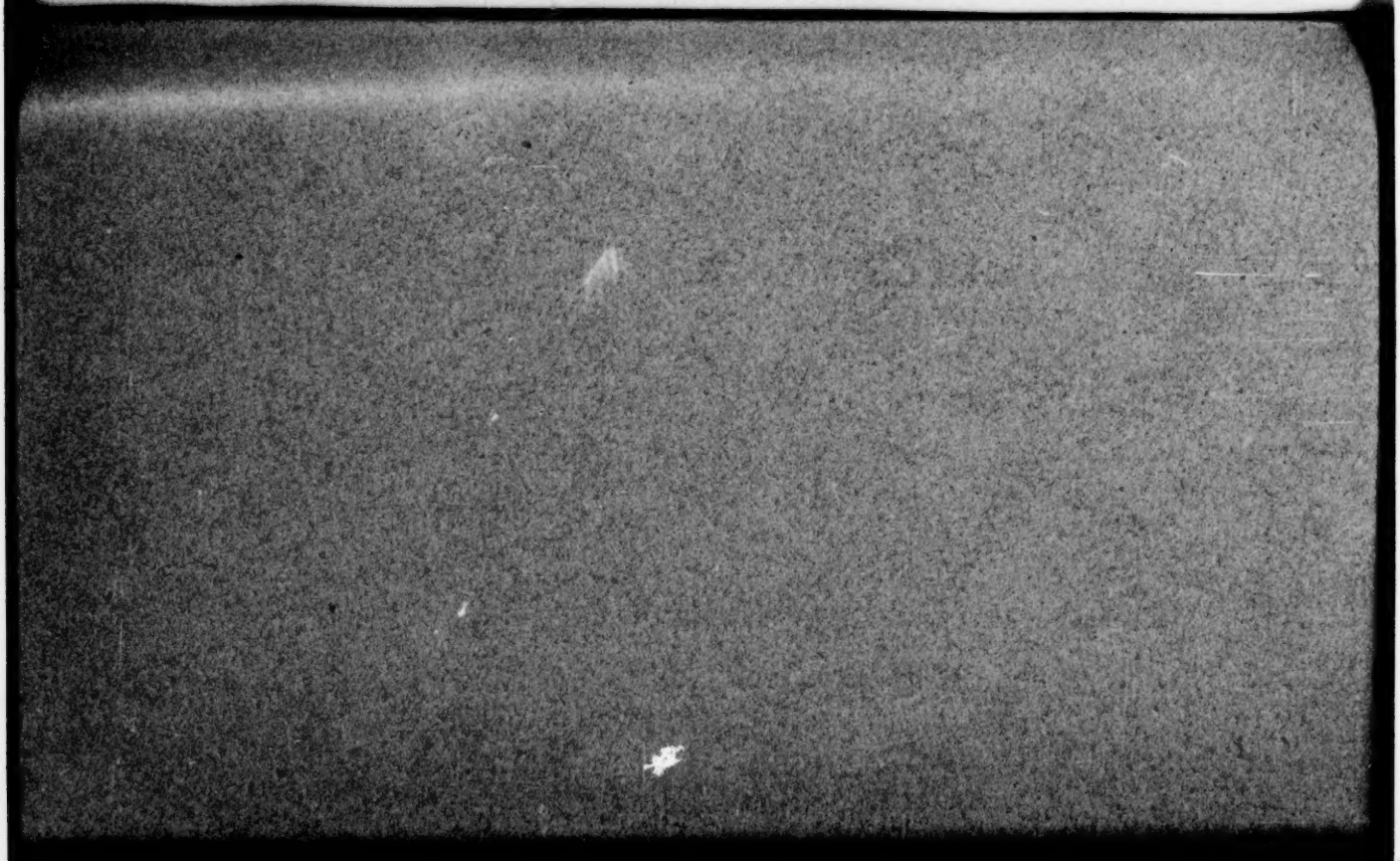
vs.

AQUILA H. PICKERING.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JUNE 14, 1897.

(16,609.)



(16,609.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 396.

JOHN A. LOMAX, PLAINTIFF IN ERROR,

vs.

AQUILA H. PICKERING.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a In the Supreme Court of the United States.

JOHN A. LOMAX, Plaintiff in Error,
vs.
AQUILA H. PICKERING, Defendant in Error. } Assignment of Errors.

And now comes John A. Lomax, the plaintiff in error, by John M. H. Burgett, his attorney, and assigns errors committed by the supreme court of the State of Illinois in this cause, and for cause of such errors shows:

1. That the said supreme court of the State of Illinois erred in its construction of the treaty between the United States of America and the united nations of Chippewa, Ottawa, and Pottawatomie Indians of the waters of Illinois, Milwaukee, and Manitouck rivers, made and concluded at Prairie du Chien on the 29th day of July, 1829.

2. That the supreme court of the State of Illinois erred in its construction of article four of said treaty.

3. That said court erred in holding against the validity of the provisions and restrictions contained in article four of said treaty as applied to the case made and title shown by the plaintiff in error.

4. That said court erred in holding that the defendant in error established such a title to the lands in question as enabled him to recover under the provisions and restrictions contained in said article four of said treaty as against the plaintiff in error upon the case made on the record at bar by the respective parties.

5. The said court erred in holding that the approval of
b the President of the United States to the deed put in evidence by plaintiff in error from Joseph Robinson and wife to Alexander W. McClure was insufficient to give validity to said deed and confer title in the plaintiff in error as against the title of the defendant in error in evidence at bar.

6. The court erred in holding the partition proceedings and deeds in evidence in the chain of title produced by the defendant in error did not require evidence of the permission or approval of the President under the case presented at bar.

7. The court erred in holding that under the law the defendant in error established such a title or case as enabled him to recover against the plaintiff in error.

8. The court should have held that the defendant in error failed under the law to establish such a title as permitted a recovery against plaintiff in error upon the case presented at bar.

9. The court should have held that there was no legal evidence or notice at the time the deed from Robinson to McClure was approved by the President that the deed from Robinson to Horton had ever been approved or any permission given therefor by the President, and that therefore the defendant in error could not recover in the case at bar.

10. The court should have entered judgment for the plaintiff in error.

11. The court erred in entering judgment for the defendant in error.

12. The judgment and finding of the said court is against the evidence.

13. The judgment and finding of the said court is against the law.

c 14. The court erred in considering incompetent evidence on behalf of the defendant in error.

15. The court erred in refusing to consider competent evidence on the part of the plaintiff in error.

16. The court erred in considering evidence of the partition proceedings in the chain of title adduced by the defendant in error and in holding the same to be legal evidence in said chain of title as against the case made by plaintiff in error.

17. The court erred in entering judgment for the defendant in error, and for other and manifest errors appearing of record; wherefore plaintiff in error prays a reversal of the said judgment of the supreme court of the State of Illinois, with directions to the said court.

JOHN A. LOMAX,
Plaintiff in Error,
By JOHN M. H. BURGETT,
His Attorney.

JAMES MAHER, *Of Counsel.*

d UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

The United States of America to the judges of the supreme court of the State of Illinois, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment in a plea which is before you in said supreme court, between John A. Lomax, plaintiff in error, and Aquila H. Pickering, defendant in error, in an action of ejectment, a manifest error hath happened, to the great damage of the said John A. Lomax, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, on or before the 28th day of June, 1897, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the first day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

S. W. BURNHAM,
Clerk U. S. Cir. Ct., N. D. Ills.

[Endorsed:] — of error.

e Supreme Court of Illinois, Northern Grand Division.

JOHN A. LOMAX
vs.
AQUILA H. PICKERING. } Appeal from Cook Superior.

I, Christopher Mamer, clerk of the said court, do hereby certify that on the third day of June, in the year of our Lord one thousand eight hundred and ninety-seven, a copy of the foregoing writ of error for the defendant in error was lodged in my office, at Ottawa.

Witness my hand and the seal of said court, at Ottawa, this eighth day of June, A. D. 1897.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

f UNITED STATES OF AMERICA, *ss*:

To Aquila H. Pickering, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the second Monday of October, in the year A. D. 1897, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois for the northern grand division, wherein John A. Lomax is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the hand and seal of the honorable the chief justice of the supreme court of the State of Illinois this 29th day of May, in the year of our Lord one thousand eight hundred and ninety-seven (A. D. 1897).

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of the State of Illinois.

Service of citation acknowledged June 2, 1897.

AQUILA H. PICKERING,
By JOHN P. AHRENS,
His Attorney.

[Endorsed:] Supreme court. John A. Lomax *vs.* Aquila H. Pickering. Citation. James Maher, appellant's att'y.

g Supreme Court of Illinois, Northern Grand Division.

JOHN A. LOMAX
vs.
AQUILA H. PICKERING. } Appeal from Cook Superior.

I, Christopher Mamer, clerk of the said court, do hereby certify that on the third day of June, in the year of our Lord one thousand eight hundred and ninety-seven, a copy of the foregoing citation and return thereon was lodged in my office at Ottawa.

Witness my hand and the seal of said court, at Ottawa, this eighth day of June, A. D. 1897.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

h Supreme Court of Illinois, Northern Grand Division.

JOHN A. LOMAX
vs.
AQUILA H. PICKERING. } Appeal from Cook Superior.

I, Christopher Mamer, clerk of the supreme court of Illinois within and for the northern grand division, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to two hundred and twenty (1 to 220), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including a certified copy of the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of the said supreme court of Illinois to be hereunto affixed, at Ottawa, in said State, this eighth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

1 At a supreme court begun and held at Ottawa, on Tuesday, the sixth day of October, in the year of our Lord one thousand eight hundred and ninety-six, within and for the northern grand division of the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; David J. Baker, justice *justice;* Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Maurice T. Moloney, attorney general; Charles J. Yockey, sheriff; Alfred H. Taylor, clerk.

Be it remembered that, to wit, on the sixth day of October, A. D. 1896, there was filed in the office of the clerk of said court a certain

transcript of the record and proceedings of the superior court of Cook county, in a cause entitled in said supreme court John A. Lomax *vs.* Aquila H. Pickering, on appeal from the said superior court of Cook county; which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *ss.*
County of Cook, }

Pleas before the Honorable John Barton Payne, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the first day of June, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twentieth.

Present: The Honorable John Barton Payne, judge of the superior court of Cook county; Jacob J. Kern, State's attorney; James Pease, sheriff of Cook county.

Attest: STEPHEN D. GRIFFIN, *Clerk.*

Be it remembered that heretofore, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and eighty-three, there was filed in the office of the clerk of said court a certain præcipe for summons, which is in the words and figures as follows, to wit:

2½ STATE OF ILLINOIS, } *ss.*
County of Cook, }

Superior Court of Cook County, June Term, A. D. 1883.

AQUILA H. PICKERING *vs.* JOHN A. LOMAX and WILLIAM KOLZE. } Ejectment. Damages, $1,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendants in a plea of ejectment, to the damage of said plaintiff in the sum of one thousand dollars, direct the same to the sheriff of Cook county to execute, and make it returnable to the June term of said court, A. D. 1883.

BISBEE, AHRENS & DECKER,
Plaintiff's Attorney.

To John J. Healy, Esq., clerk.

CHICAGO, *May* 2, 1883.

And on the day and year last aforesaid, to wit, May 5th, A. D. 1883, there issued out of the office of the clerk of said court the people's writ of summons; which writ, with sheriff's return thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, }
Cook County, } ss:

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon John A. Lomax and William Kolze, if they shall be found in your county, personally to be and to appear before the superior court of Cook county on the first day of the term thereof to be holden at the court-house, in
3 the city of Chicago, in said Cook county, on the first Monday of June next, to answer unto Aquila H. Pickering in a plea of ejectment, to the damage of said plaintiff, as it is said, in the sum of one thousand dollars.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Jno. J. Healy, clerk of our said court, and the
[SEAL.] seal thereof, at Chicago aforesaid, this 5th day of May, A. D. 1883.

JNO. J. HEALY, *Clerk.*

(Endorsed:) Pd., 1.35; M., 1.80 Served this writ on the within-named John A. Lomax by reading the same to him the 25th day of May, 1883. Seth F. Hanchett, sheriff, by F. Liebrandt, deputy. Served this writ on the within-named William Kolze by reading the same to him this 25th day of May, 1883. Seth F. Hanchett, sheriff, by Henry Wulff, deputy.

And, to wit, on the 5th day of May, 1883, there was filed in the office of the clerk of said court a certain declaration, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, }
Cook County, } ss.

In the Superior Court of Cook County, to the June Term, A. D. 1883.

4 Aquila H. Pickering, plaintiff in this suit, by Bisbee, Ahrens & Decker, his attorneys, comes and complains of John A. Lomax and William Kolze, defendants, who have been summoned, according to the form of the statute in such case made and provided, in a plea of ejectment;

For that whereas the said plaintiff heretofore, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and eighty-three, was possessed of certain real estate, lands, and premises, with the appurtenances, situate in the said Cook county and known and described as follows, to wit, that part of Robinson's reservation, in township forty (40) north, range twelve (12) east, of the third principal meridian, bounded as follows: Commencing at a point nineteen and fifty-nine one-hundredths (19.59) chains west of the southeast corner of the north section of said Robinson's reservation and two and sixty-seven one-hundredths chains south of the south line of said section, running thence west ten and

seventy-two one-hundredths (10.72) chains; thence north eighteen and sixty-seven (18.67) one-hundredths chains; thence east ten and seventy-two one-hundredths (10.72) chains; thence south eighteen and sixty-seven (18.67) one-hundredths chains to the place of beginning; also commencing at a point in the south line of said north section eight and twenty-three one-hundredths (8.23) chains west of the southeast corner thereof, running thence north fourteen and ninety-five one-hundredths (14.95) chains; thence west eleven and thirty-six one-hundredths (11.36) chains; thence south seventeen and sixty-one one-hundredths (17.61) chains; thence east eleven and thirty-six one-hundredths (11.36) chains; thence north two and sixty-seven one-hundredths (2.67) chains to the place of beginning; which said premises the said plaintiff claims in fee, and the said plaintiff being so possessed thereof, the said defendants afterwards, to wit, on the third day of May, in the year of our Lord one thousand eight hundred and eighty-three, entered into the said premises and ejected the said plaintiff therefrom and unlawfully withhold from the said plaintiff the possession thereof, to the damage of the plaintiff of one thousand dollars, and therefore he brings his suit, etc.

BISBEE, AHRENS & BECKER,
Attorneys for Plaintiff.

And, to wit, on the 6th day of June, A. D. 1883, there was filed in the office of the clerk of said court a certain plea, which is in the words and figures as follows:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court, June Term, 1883.

AQUILA H. PICKERING } Ejectment.
vs.
JOHN A. LOMAX. }

William Kolze and the defendants, by P. T. McElherne, their attorney, come and defend the wrong and injury, when, etc., and say that they are not guilty of unlawfully withholding the tenements in the said declaration mentioned or any part thereof, in manner and form as the plaintiff has above thereof complained against them; and of this they put themselves upon the country.

By P. T. McELHERNE,
Att'y for Def'ts.

And the plaintiff doth the like.

By BISBEE, AHRENS & DECKER,
His Attorneys.

And afterwards, to wit, on the 21st day of July, A. D. 1885, the same being one of the days of the July term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

AQUILLA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } Ejectment.

On the agreement of the parties to this suit, now here made in open court, this cause is submitted to the court for trial without a jury; and the court, now here, after hearing all the evidence adduced, the arguments of counsel, and being fully advised in the premises, finds the defendants not guilty; whereupon the plaintiff submits herein his motion for a new trial in said cause. After argument of counsel and due deliberation by the court, said motion is overruled and a new trial denied.

Therefore it is considered by the court that the defendants do have and recover of and from the plaintiff their costs and
7 charges in this behalf expended and have execution therefor.

Whereupon the plaintiff, having entered his exceptions herein, prays an appeal from the judgment of this court to the supreme court of this State, which is allowed him on filing herein his appeal bond in the penalty of two hundred and fifty dollars, with surety thereon to be approved by the court, together with his bill of exceptions, on or before the twenty-first day of September next.

And afterwards, to wit, on the 10th day of December, A. D. 1892, there was filed in the office of the clerk of said court a certain mandate, which is in words and figures as follows, to wit:

At a supreme court begun and held at Ottawa, on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-two, within and for the northern grand division of the State of Illinois.

Present: Joseph M. Bailey, chief justice; John Schofield, justice; Alfred M. Craig, justice; Simeon P. Shope, justice; Benj. D. Magruder, justice; David J. Baker, justice; Jacob W. Wilkin, justice; George Hunt, attorney general; William W. Taylor, sheriff; Alfred H. Taylor, clerk.

Be it remembered that afterwards, to wit, on the fifth day of October, 1892, certain proceedings were had and an order entered of record by the said court in words and figures following, to wit:

8 AQUILLA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } No. 1447, 79. Error to Superior Court, Cook County.

And now, on this day, comes the said plaintiff in error herein and files in this court the opinion and mandate of the Supreme Court of the United States reversing the judgment of this court heretofore entered herein and remanding said cause to this court for further proceedings not inconsistent with the said opinion of said Supreme Court of the United States, and thereupon moves the court to reverse the judgment of the superior court of Cook county and remand said

cause to that court for further proceedings in accordance with said mandate and opinion.

Therefore it is considered by the court that said motion be sustained, and that the judgment of the superior court of Cook county in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the superior court of Cook county for such other and further proceedings as to law and justice shall appertain, not inconsistent with the opinion of the Supreme Court of the United States.

And it is further considered by the court that the plaintiff in error recover of and from the said defendants in error his costs by him in this behalf expended, and that he have execution therefor.

STATE OF ILLINOIS, *ss*:

Supreme Court, Northern Grand Division.

9 I, Alfred H. Taylor, clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause of record in my office.

I testimony whereof I have set my hand and affixed the seal of the said supreme court, at Ottawa, this twenty-first day of November, in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.] A. H. TAYLOR,
Clerk of the Supreme Court.

And, to wit, on the 10th day of December, A. D. 1892, the same being one of the days of the December term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

AQUILA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } 86825. Ejectment.

On motion of plaintiff's attorney, it is ordered that this cause be replaced upon the several dockets of this court, pursuant to the mandate filed herein.

And afterwards, to wit, on the 8th day of April, A. D. 1896, the same being one of the days of the April term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

10 AQUILA H. PICKERING
vs.
JOHN A. LOMAX *et al.* } 86825. Ejectment.

On the agreement of the parties to this suit, now here made in open court, this cause is submitted to the court for trial without a

jury; and the court, now here, after hearing all the evidence adduced, the arguments of counsel, and being fully advised in the premises, finds the defendant- guilty, and that the right to the possession of the premises described in the plaintiff's declaration filed in said cause is in the plaintiffs in fee-simple.

Whereupon the defendants submit herein their motion for a new trial in said cause.

And afterwards, to wit, on the 8th day of June, A. D. 1896, the same being one of the days of the June term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

AQUILA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } 86825. Ejectment.

This cause coming on to be heard upon the defendants' motion, heretofore entered herein, for a new trial in said cause, after arguments of counsel and due deliberation by the court, said motion is overruled and a new trial denied.

11 Therefore it is considered by the court that the plaintiff do have and recover of and from the defendants the possession in fee-simple of that certain piece, parcel, or tract of land, with the appurtenances thereon, situated in the county of Cook and State of Illinois, as follows, to wit, that part of Robinson's reservation in township (40) forty north, range (12) twelve east, of the third principal meridian, bounded as follows: Commencing at a point nineteen and fifty-nine one-hundredths (19.59) chains west of the southeast corner of the north section of said Robinson's reservation and two and sixty-seven one-hundredths chains south of the south line of said section, running thence west ten and seventy-two one-hundredths (10.72) chains; thence north eighteen and sixty-seven one-hundredths (18.67) chains; thence east ten and seventy-two one-hundredths (10.72) chains; thence south eighteen and sixty-seven one-hundredths (18.67) chains to the place of beginning; also commencing at a point in the south line of said north section eight and twenty-three one-hundredths (8.23) chains west of the southeast corner thereof, running thence north fourteen and ninety-five one-hundredths (14.95) chains; thence west eleven and thirty-six one-hundredths (11.36) chains; thence south seventeen and sixty-one one-hundredths (17.61) chains; thence east eleven and thirty-six one-hundredths (11.36) chains; thence north two and sixty-seven one-hundredths (2.67) chains to the place of beginning, and that a writ of possession do issue therefor, and that the plaintiff do have and recover of and from the defendants his costs and charges in this behalf expended, and have execution therefor.

12 Whereupon the defendants, having entered their exceptions herein, prays an appeal to the supreme court of this State, which is allowed on filing their appeal bond herein in the sum of ten thousand dollars, to be approved by the court, within sixty days

from this date, and leave given the defendants to file their bill of exceptions herein within sixty days from this date.

And afterwards, to wit, on the 3rd day of August, A. D. 1896, the same being one of the days of the August term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

AQUILA H. PICKERING
vs.
JOHN A. LOMAX *et al.* } 86825. Ejectment.

On motion of defendants' attorney, it is ordered that the time to file the appeal bond and bill of exceptions herein be, and it is hereby, extended until the twenty-ninth day of September, A. D. 1896.

And afterwards, to wit, on the 21st day of September, A. D. 1896, the same being one of the days of the September term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

AQUILA H. PICKERING
vs.
JOHN A. LOMAX *et al.* } 86825. Ejectment.

That it appearing to the court since the praying of an appeal herein that the defendant William Kolze has died, it is hereby ordered that the defendant John A. Lomax may perfect his appeal individually in the same manner as if he had prayed a separate appeal.

13 And, to wit, on the 21st day of September, A. D. 1896, there were filed in the office of the clerk of said court a certain bill of exceptions and stipulation, which are in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss.*:

In the Superior Court of Cook County. In Chancery.

AQUILA H. PICKERING
vs.
JOHN A. LOMAX.

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14 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

AQUILA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } Ejectment.

Bill of Exceptions.

Be it remembered that on the trial of the above-entitled cause, before the Honorable John Barton Payne, one of the judges of the superior court of Cook county before whom the issues were tried, the case having been submitted to the court and a trial by jury waived, on the 25th and 26th days of March, A. D. 1896, the plaintiff offered in his behalf the following evidence:

Appearances: John P. Ahrens, Esq., appearing on behalf of the plaintiff; James Maher, Esq., and A. W. Browne, Esq., on behalf of the defendants.

Counsel for plaintiff offered and read in evidence article 4 of the treaty between the United States and Indians, in vol. 7 of the United States Statute- at Large, page 320, which is as follows:

"ARTICLE IV.

Certain Tracts to be Granted to Certain Descendants from the Indians.

15 There shall be granted by the United States to each of the following persons (being descendants from Indians) the following tracts of land, viz:

To Claude Laframboise one section of land on the Riviere aux Pleins, adjoining the line of the purchase of 1816.

To Francis Bourbonne, Jr., one section at the missionary establishment on the Fox river of the Illinois.

To Alexander Robinson, for himself and children, two sections on the Riviere aux Pleins above and adjoining the tract herein granted to Clause Laframboise; to Pierre Leclerc one section at the village of the As sim-in-eh-kon or Paw-paw grove; to Waish-kee-shaw, a Pottawatomie woman, wife of David Laughton, and to her child one and a half sections at the old village of Nay-ou-say, at or near the source of the Riviere aux Sables of the Illinois; to Billy Caldwell two and a half sections on the Chicago river above and adjoining the line of the purchase of 1816; to Victoire Pothier one-half section on the Chicago river above and adjoining the tract of land herein granted to Billy Caldwell; to Jane Miranda one quarter section on the Chicago river above and adjoining the tract herein granted to Victoire Pothier; to Madeline, a Pottawatomie woman, wife of Joseph Ogee, one section west of and adjoining the tract herein granted to Pierre Leclerc at the Paw-paw grove; to Archange Ouilmette, a Pottawatomie woman, wife of Antoine Ouilmette, two

sections for herself and her children on Lake Michigan south of and adjoining the northern boundary of the session herein made by the Indians aforesaid to the United States; to Antoine and
16 Francois Le Clere one section each, lying on the Mississippi river north of and adjoining the line drawn due west from the most southern bend of Lake Michigan, where said line strikes the Mississippi river; to Mo-ah-way one quarter section on the north side of and adjoining the tract herein granted to Waish-kee-shaw.

The tracts of land herein stipulated to be granted shall never be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President of the United States."

Counsel for plaintiff also offered in evidence a copy of a patent issued by John Tyler, President of the United States, dated the 28th day of December, 1843, to Alexander Robinson, for himself and children, of two sections on the River Aux Plains, adjoining the tract granted to Claude Laframboise, and containing the description by meets and bounds.

Mr. MAHER: I object to the copy of the patent going in. The patent itself is the best evidence, but I will state to the court that we hold and have here the original patent.

The COURT: Well, then, let the original patent be read in evidence.

The original patent above referred to was thereupon offered and read in evidence by the plaintiff, and the same is in the words and figures following, to wit:

Patent.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the fourth article of the treaty, between the
17 United States of America, and the united nation of Chippewa, Ottawa and Pottawatamie Indians, of the waters of the Illinois, Milwaukee and Manitouck rivers, made and concluded at Prairie du Chien, in the "Territory of Michigan," now Wisconsin Territory on the twenty-ninth day of July one thousand eight hundred and twenty-nine, the United States agreed to grant to "Alexander Robinson" for himself and children, "two sections on the Riviere Aux Pleins, above and adjoining the tract" "granted to Claude Laframboise," and whereas, under the said article, there has been surveyed for the said "Alexander Robinson, for himself and childred," two sections of land containing one thousand two hundred and eighty acres, bounded and described as follows to wit: Beginning on the north boundary of a survey for six hundred and forty acres of land granted to Claude Laframboise by the same treaty, sixteen chains and fifteen links west of the northeast corner thereof, at a post from which a black oak fifteen inches in diameter, bears north, sixty-nine degrees, thirty minutes west—distant one hundred and twenty-

two links, marked A. R. with a notch in the blaze below, and a burr oak fifteen inches in diameter, bears north twelve degrees east, distant sixty and one-half links, marked A. R. and with three notches,—thence west with the south boundary of this survey, and the north boundary of Claude Laframboise's survey,—at twenty-seven chains the east edge of a pond three hundred and fifty links wide (it is full of trees) at fifty-seven chains six links the easterly bank of the River "Aux Pleins,"—two hundred and ninety-four links wide running south, at sixty-three chains the northwest corner of
18 Laframboise's survey, at which is a post in the edge of prairie, from which a burr oak twenty-four inches in diameter, bears north eighty-three degrees and fifteen minutes east, distant seventy and a half links, marked C. L. under which is a notch in the blaze and a white oak fifteen inches in diameter bears south forty-four degrees east, distant one hundred and forty-two and a half links, marked C. L. with a notch in the blaze, eighty chains to the southwest corner of the survey,—at which is a mound five feet at the base, and five feet high, in pyramidical form, in which is placed a round stone, about one foot in diameter, by the side of which is a post in said mound, from which a rock firmly bedded in the ground, bears north twenty-three degrees west, distant sixty-nine links,—thence north, in a prairie, eighty chains to a corner of this survey at which is a post in a small mound two feet high, and two feet in diameter, from which a burr oak fifteen inches in diameter bears south forty-nine degrees east, distant one hundred and fifty-two and a half links, marked A. R. under which is a notch in a blaze and burr oak eighteen inches in diameter, bears south, seventy-eight degrees and forty-five minutes east, distant one hundred eighteen and a half links, marked A. R. with a notch under in a blaze,—at three chains and fifty links east of this corner the westerly bank of Aux Pleins river, running south thirty-three degrees west, thence west, at nineteen chains a flag pond twenty-eight chains and fifty links to a prairie stone, in the pond, for a corner of this survey,—said stone being nearly in the shape of an egg, and being about sixteen inches long, and nine inches in diameter,
19 over which is raised a mound of sod, five feet at the base, and four feet high, in which is a post,—the sod to erect the mound was dug in a dry place, the center thereof bearing from the mound north, thirty-seven degrees and fifteen minutes west, distant one hundred and forty-five links,—thence north at thirty links leaves the pond,—eighty chains and eighteen links to the northwest corner of this survey in a prairie at which is a stone fifteen inches long, and nine inches in diameter, nearly in the shape of an egg, over which is raised a mound five feet at the base, and five feet high, in which is a post. Thence east with the north boundary of the survey,—at twenty chains and sixty-six links the westwardly bank of the River Aux Pleins, two hundred and fifty-nine links wide running from northwest to southeast at forty-seven chains, and twenty-five links, the east bank of a sloo coming from the northwest,—eighty chains and seventy-five links to the northeast corner of this survey, at which is a post in the edge of the timber,

from which a hickory eleven inches in diameter, bears north two degrees and thirty minutes west, distant eighteen links marked with a blaze and notch,—a white oak twenty inches in diameter bears south eighty-four degrees and fifteen minutes west, distant seventy-seven links, marked A. R. with a notch in a blaze, and a black oak ten inches in diameter, bears south twenty-two degrees and thirty minutes west, distant fifty-five links, marked A. R. with notch in blaze, thence south eighty chains to a corner of this survey, at which is a post from which a burr oak fifteen inches in diameter, bears south forty degrees and forty-five minutes west, distant two hundred and nine links, and a burr oak thirteen
20 inches in diameter, bears south twenty-nine degrees and fifteen minutes east, distant four hundred and forty-three links, both trees are marked with A. R. and under the letters a notch in a blaze, thence east twenty-eight chains and fifty links to a corner of this survey at which is a post in a mound five feet high and five feet thick, of a pyrimidical form, from which a white oak eleven inches in diameter bears north eighteen degrees and thirty minutes east, distant five hundred and twenty links, marked with a blaze and notch, thence south, at fifty chains leaves wet and low prairie, covered with from four to six inches of water, bearing east and west at sixty-five chains enters prairie, and the north edge of a swamp, mostly two feet deep, at seventy-nine chains and fifty links leaves the swamp, eighty chains to the beginning corner; being in township forty north of range twelve east of the third principal meridian, in the State of Illinois. Now know ye that there is therefore granted by the United States unto the said "Alexander Robinson, for himself and children" and to his and their heirs, the tract of land above described; to have and to hold the said tract of land, with the appurtenances unto the said Alexander Robinson, for himself and children, and to his or their heirs and assigns forever, "but never to be leased or conveyed" by him, them, his or their heirs, "to any person whatever without the permission of the President of the United States."

In testimony whereof, I, John Tyler, President of the United States have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

21 Given under my hand at the city of Washington, the twenty-eighth day of December in the year of our Lord one thousand eight hundred and forty-three and of the Independence of the United States the sixty-eighth.

By the President:

JOHN TYLER,
By R. TYLER, *Sec'y.*

[SEAL.] J. WILLIAMSON,
Recorder of the General Land Office.

Recorded, vol. J, pages 334, 335, 336, 337, and 338, end.

Counsel for plaintiff thereupon offered in evidence a certified copy of a decree of partition entered in the county court of Cook county on the 29th day of May, 1848, wherein Joseph Robinson was plain-

tiff and Alexander Robinson, David Robinson, Cyntha Robinson, and Mary Robinson were defendants, together with a certificate of D. M. Browning, Commissioner, Department of the Interior, Office of Indian Affairs, thereto attached, in the words and figures following, to wit:

22 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 7, 1896.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the certified copy of the original as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[Seal of Office of Indian Affairs.]

D. M. BROWNING,
Commissioner.

(Here follows diagram marked p. 22.)

The above diagram shows the portion of Robinson's reserve set off to Joseph Robinson May 29th, 1849, by the Cook Co. court of the State of Illinois. See plat marked "A" in the copy of decree, hereto attached.

The portions colored green are the tracts included in the accompanying deed from Joseph Robinson & wife to Patrick Powers, dated July 5th, '64; submitted for the approval of the President of the United States.

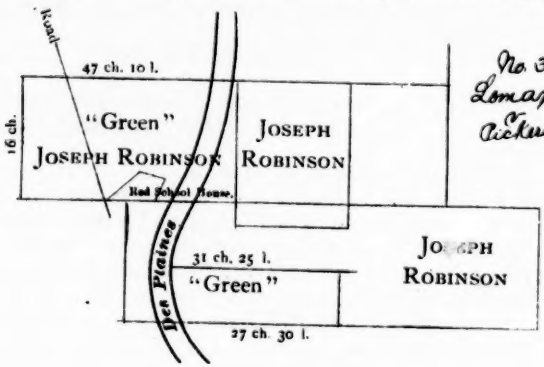
Upon examination of the records in the recorder's office of Cook Co., Ills., I find no conveyance of said premises colored green, other than to Patrick Powers, neither any judgments in any of the courts having their records in Cook Co. against said Joseph Robinson which are liens on said land, and no tax sales of the same remaining unredeemed or uncanceled of record.

23 FERNANDO JONES.

Chicago, Ills., January 31st, 1865—5 o'clock p. m.

[Internal-revenue stamp.]

PLAT OF PART OF ROBINSON'S RESERVE, COOK COUNTY ILLS.



No 396
Lomax
Pickering
p 22

Cook County Court, May Term, A. D. 1848.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Hugh T. Dickey, judge of the Cook county court, within and for the county of Cook and State of Illinois, at a term thereof begun and holden at the court-house, in the city of Chicago, in the county and State aforesaid, on Monday, the first day of May, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the United States the seventy-second.

Present: The Honorable Hugh T. Dickey, judge; Patrick Ballingall, Esquire, prosecuting attorney; Isaac Cook, sheriff.
Attest: JAMES CURTISS, *Clerk.*

Be it remembered that heretofore, to wit, on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and forty-eight, the said day being one of the days of the May term of the aforesaid Cook county court, the following, among other, proceedings were had and entered of record, to wit:

24 JOSEPH ROBINSON
vs.
ALEXANDER ROBINSON, DAVID ROBINSON, CYNTHIA ROBINSON, & MARY ROBINSON. } Petition for Partition.

This day came the said complainant, by Richard J. Hamilton, his solicitor, and presented the report of William H. Davis, Carleton Hollard, and Thomas C. Moore, commissioners, heretofore appointed by this court to make partition of the lands in the said complainant's petition mentioned, the said commissioners being disinterested and not connected with either of the said parties by consanguinity or affinity, and, after being duly sworn, went upon the premises described in said petition to make partition of the said lands among the several parties according to their respective interests therein, and having made said partition, reported the same to this court; which said report was accepted and confirmed and is as follows—that is to say:

To the Honorable Hugh T. Dickey, judge of the Cook county court, Cook county, Illinois:

We, the undersigned commissioners, having been appointed by an order of the said court to make partition of the lands and tenements mentioned and described in the said order of court between Alexander Robinson, Joseph Robinson, David Robinson, Mary Robinson, and Cynthia Robinson, do, in conformity with law and the said order of this court, make the following report:

That, having been sworn fairly and impartially to make
25 partition of the said lands between the said parties, we went upon the lands and tenements aforesaid, and, after having

carefully examined the quality and ascertained the quantity thereof, we proceeded to ascertain by metes and bounds the respective shares of each, according to their several interests therein, in the following manner, to wit:

In the first place, we assigned and set apart to the said Alexander Robinson the following-described tract, being a parcel of said lands, and which is designated and bounded as follows, to wit: Two hundred and fifty-six acres from the south side of the south section of the said lands, being thirty-two chains wide from north to south and extending across said section from east to west eighty chains wide.

Secondly. We assign and set apart to the said David Robinson the following-described tract, being part and parcel of the same lands, and which is designated and bounded as follows, to wit: One hundred and ninety-two acres from the south side of the north half of the said south section, being a strip of land twenty-four chains wide from north to south and extending across said section from east to west eighty chains; also a strip from the north part of the south half of said section, being eight chains wide from north to south and extending across said section eighty chains, containing sixty-four acres.

Thirdly. We assign and set apart to the said Joseph Robinson the following-described tract, being part and parcel of the same lands, and which is designated and bounded as follows, to wit: One hundred and twenty-eight acres from the south side of the
26 north section of said lands, being sixteen chains wide from north to south and extending the width of said section eighty chains; also one hundred and twenty-eight acres from the north end of the south section of said lands, being sixteen chains wide from north to south and extending across said section eighty chains.

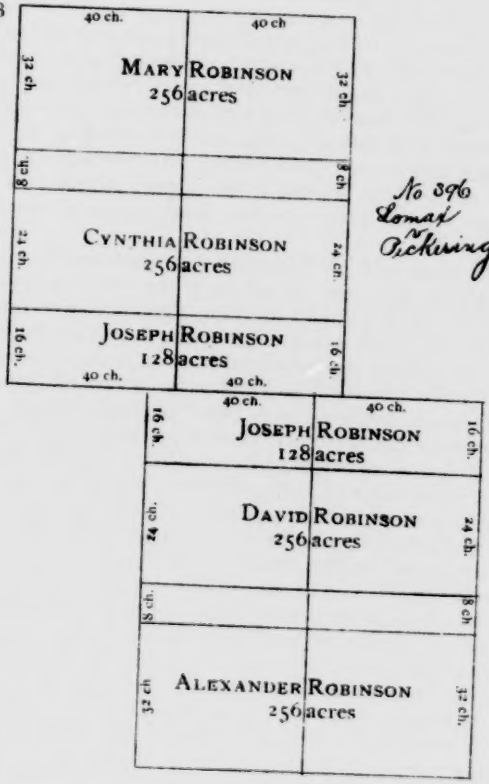
Fourthly. We assign and set apart to the said Cynthia Robinson the following-described tract, being part and parcel of the same lands, and which is designated and bounded as follows, to wit: Sixty-four acres from the south side of the north half of the north section, being eight chains wide from north to south and eighty chains from east to west; also one hundred and ninety-two acres from the south half of the north end of the aforesaid section, being twenty-four chains wide from north to south and eighty chains from east to west.

Fifthly and lastly. We assign and set apart to the said Mary Robinson the residue of said lands, which is designated and bounded as follows, to wit: Two hundred and fifty-six acres from the north end of the north section, as aforesaid, being eighty chains in width from east to west and thirty-two chains from north to south.

All the lands aforesaid being two sections in township forty north of range twelve east, in Cook county, Illinois, and known as "Alexander Robinson's reservation," a description of which said tracts or parcels of land as partitioned and assigned to the said parties by metes and bounds, as aforesaid, will more fully and ex-
27 plicitly appear by reference to the annexed plat and explanations, which is intended to be made a part of this report.

All of which is respectfully submitted.

38



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Lomax
Pickering
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Witness our hands and seals this 25th day of April, A. D. 1848.

T. C. MOORE,
W. H. DAVIS,
C. HOLLAND,
Commissioners.

(Here follows diagram marked p. 27.)

28 And thereupon, on motion of the said comp'ainant's solicitor, it is ordered, adjudged, and decreed that partition of the said land be made as set forth in the said report, viz:

That Alexander Robinson have two hundred and fifty-six acres from the south side of the south section of the said lands, being thirty-two chains wide from north to south and extending across said section from east to west eighty chains.

That there be, and is hereby, set apart to David Robinson one-hundred and ninety-two acres from the south side of the north half of the said south section, being a strip of land twenty-four chains wide from north to south and extending across said section from east to west eighty chains; also a strip from the north part of the south half of said section, being eight chains wide from north to south and extending across said section eighty chains, containing sixty-four acres.

That there be, and is hereby, set apart to Joseph Robinson one hundred and twenty-eight acres from the south side of the north section of said lands, being sixteen chains wide from north to south and extending the width of said section, being eighty chains; also one hundred and twenty-eight acres from the north end of the south section of said lands, being sixteen chains wide from north to south and extending across said section eighty chains.

That there be, and is hereby, set apart to Cynthia Robinson sixty-four acres of said land from the south side of the north half of the north section, being eight chains wide from north to south and eighty chains from east to west; also one hundred and ninety-two
29 acres from the north end of the south half of the aforesaid section, being twenty-four chains wide from north to south and eighty chains from east to west.

That there be, and is hereby, set apart to Mary Robinson the residue of said lands, being two hundred and fifty-six acres from the north end of the north section, as aforesaid, being eighty chains in width from east to west and thirty-two chains from north to south.

All of the said partitions of land set apart, as aforesaid, being two sections of land granted to the said Alexander Robinson and his childre*d*, Joseph Robinson, David Robinson, Cynthia Robinson, and Mary Robinson, by a treaty made and concluded by and between the Government of the United States of America and the united nation of Ottawa, Pottawatomie, and Chippewa Indians of the Illinois, Milwaukee, and Manitowoc rivers, at Prairie du Chien, in the year of our Lord one thousand eight hundred and twenty-nine, and situated and being in Cook county, Illinois, and in township forty north, range twelve east.

And it is further ordered, adjudged, and decreed that the said parties make and execute partition deeds, each to the other, for their respective interests in the said lands on or before the first day of September next, and that Buckner S. Morris, Esquire, as commissioner appointed for that purpose, make and execute a partition deed or deeds for the minors herein in conformity with the provision of this decree.

And should the said parties in interest and the said Buckner S. Morris not make and execute the said deeds by or before the first day of September, A. D. 1848, then and in that event Alfred
30 Cowles, Esquire, is hereby appointed commissioner to make and execute the said deeds in conformity with the provisions of this decree.

And it is further ordered and decreed that the costs herein be taxed equally against the parties in interest in the said lands.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Thomas B. Carter, clerk of the superior court of Chicago, within and for the county and State aforesaid, do hereby certify the above and foregoing to be a true and perfect and complete copy of a certain decree in a certain cause decided in the Cook county court, on the chancery side thereof, wherein Joseph Robinson was complainant and Alexander Robinson, Cynthia Robinson, and Mary Robinson were defendants.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Chicago, this sixteenth day of November, A. D. 1864.

THOMAS B. CARTER, *Clerk.*

[Internal-revenue stamp.]

31 STATE OF ILLINOIS, } ss:
Cook County, }

I, the undersigned, Fernando Jones, do depose and say that I have been personally acquainted with Joseph Robinson, named in the foregoing suit, since the year 1835; that said Robinson named in the annexed decree, made in the year 1848, was on the 5th day of July, A. D. 1864, above the age of twenty-one years.

FERNANDO JONES.

Sworn and subscribed to before me, Thomas B. Carter, clerk of the superior court of Chicago, this sixteenth day of November, A. D. 1864.

THOMAS B. CARTER,
[SEAL.] *Clerk of the Superior Court of Chicago, Cook County, State of Illinois.*

[Internal-revenue stamp.]

32 Mr. MAHER: I object to the degree of partition or copy of any proceedings in partition going in evidence here to establish the plaintiff's case, because it is very apparent from the treaty

d the patent issued under the treaty that Alexander Robinson or s children had no power to partition or be parties to a partition make any partition of these lands without the permission of the resident of the United States, on account of the inhibitive or re-rictive clauses in the patent and treaty.

The COURT: What does this decree purport to be?

Mr. MAHER: A partition of the land in severalty between Alex-nder Robinson and his children.

Mr. AHRENS: Do you make any objection to the certificate or nything of that sort?

Mr. MAHER: I object to it on the ground that it is incompetent, nd I object to the whole of the partition proceedings, as no court r person had any power to partition or make any deed in partition without it being shown that the President sanctioned it, and I will sk Mr. Ahrens if he expects to follow this up by showing that the partition proceedings or conveyances thereunder were in any way sanctioned or permitted by the President.

Mr. AHRENS: No; you do not object as to any informality in the certified copy of the decree?

Mr. MAHER: The objection is not in any way as to whether it is a certified copy or an original decree. I do not object on the ground that it is not a certified copy of what purports to be a decree, but we claim that the court had no power to enter such a decree

33 and we object to the decree itself. We claim the whole proceedings in partition were invalid. We claim that under the patent and treaty it was distinctly provided that the lands in question were never to be conveyed by Alexander Robinson or his children to any person whatever without the consent of the President, and that no conveyances whatever could be made by any of them or for any of them, either amongst themselves of to any other person, without the consent of the President.

The COURT: I will reserve that and hear you on this with the rest of your objections when you reach that question on the argument.

Mr. AHRENS: I next offer in evidence a certified copy of a deed, certified by the department at Washington, from Joseph Robinson and wife to Horton, dated the third day of August, 1858, and attached to this is the following memoranda:

First. There is a certificate of Norman T. Gassette, clerk of the circuit court of Cook county, that the annexed is a true copy on record of a certain instrument filed in the office on the 16th day of July, 1861, recorded, etc. Then follows the patent, granting to Alexander Robinson and his children, pursuant to the fourth article of treaty between the Indians known as the Chippewa and Pottawatomie Indians, and other memoranda, the same being in the words and figures following, to wit:

34 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 7, 1896.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby

certify that the paper hereto attached is a true copy of the certified copy of the original deed as the same appears of record in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed on the day and year first above written.

D. M. BROWNING,
Commissioner.

This indenture, made this third day of August in the year of our Lord one thousand eight hundred and fifty-eight, between Joseph Robinson and Maria his wife of the town of Leyden county of Cook and State of Illinois party of the first part and John F. Horton of the city of Chicago and the county and State aforesaid party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of forty-one hundred ($4,100) dollars in hand paid by the party of the second part, (the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom) has granted, bargained, sold, remised, released, conveyed, aliened and confirmed and by these presents does grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part and to his heirs and
assigns forever, all the following-described lots, pieces or
35 parcels of land, situate in the county of Cook and State of Illinois, and known and described as follows, to wit:

Commencing nineteen chains and fifty-nine links west of the southeast corner of the north section of Robinson's reservation & two chains and sixty-seven links south of the S. line of said sec. thence west ten chains and seventy-two links to a post witness tree a white elm twenty inches in diameter, bears west twenty-eight links, thence north eighteen chains and 67 links to a post, thence east, ten chains and 72 links to a post witness described in second deed, thence south eighteen chains & sixty-seven links to the place of beginning, containing by estimation twenty acres be the same more or less.

Also the following to wit: Commencing at the southeast corner of the north section of Robinson's reservation thence south sixty-six degrees west six chains & fifty-one links to a post, thence west thirteen chains & sixty-five links to a post a burr O. — diam. bears S. 36 west 36 links, thence north seventeen chains and sixty-one links to a post of white O. six inches in diam. bears N. 83½° W. 15 links a black O. 18 inches in diam. bears S. 79° E. 64 links, thence E. 11 chains & 36 links to a burr oak 24 inches in diam. thence S. 14 chains & 95 links to a post, thence E. 8 chains & 23 links to the place of beginning containing twenty-one & $\frac{1}{10}$ of an acre, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits
thereof, and all the estate, right, title, interest, claim or de-
36 mand whatsoever, of the said party of the first part either in law or in equity, of, in and to the above-bargained premises

with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described, with the appurtenances unto the said party of the second part, his heirs and assigns forever.

And the said Joseph Robinson & wife party of the first part, for their heirs, executors and administrators, do covenant, grant, bargain and agree, to and — the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law in fee-simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever; and the above-bargained premises, in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year first above written.

JOSEPH ROBINSON. [SEAL.]
ELLEN MARIA ROBINSON. [SEAL.]

37 STATE OF ILLINOIS, } ss:
Cook County, }

I, justice of the peace in and for the said Cook county, in the State aforesaid, do hereby certify that Joseph Robinson & Ellen Maria Robinson, who are personally known to me as the same person- whose name- are subscribed to the within instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth; and the said Ellen Maria Robinson, wife of the said Joseph Robinson, having been by me examined separate and apart and out of the hearing of the said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 4th day of August, A. D. 1858.

WM. H. GALLUP, [SEAL.]
Justice of the Peace.

No. 46310. Filed July 18th, 1861.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Norman T. Gassette, clerk of the circuit court and *ex officio* recorder in and for said county, in the State aforesaid, do hereby
38 certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 18th day of July, A. D. 1861, and recorded in Book 217 of Deeds, on page 300.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 1st day of August, A. D. 1870.

[SEAL.] NORMAN T. GASSETTE,
Clerk of the Circuit Court and ex Officio Recorder of Cook County.

[5-ct. rev. stamp.]

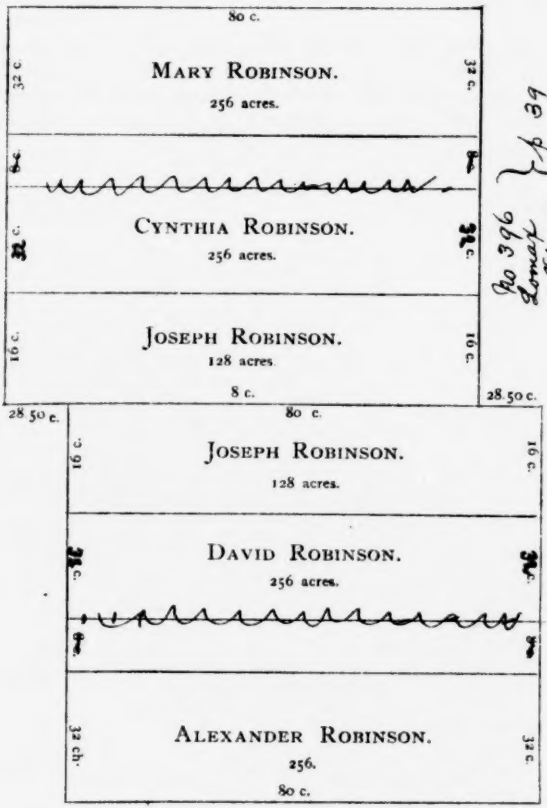
By patent dated December 28th, 1843, there was granted to "Alexander Robinson, for himself and his children," pursuant to 4th article of treaty between the United States and the united nations of Chippewa, Ottawa, and Pottawatomie Indians, made at Prairie du Chien, July 29th, 1829, two sections of land on the River New Plains, above and adjoining the tract granted to Claude Lafrombois, which two sections contain 1,280 acres and are fully described in said patent, which is recorded at Washington, in Book 9, pages 334 to 338.

On February 22d, 1847, Joseph Robinson, a son of said Alexander Robinson, filed his petition for partition of said lands in the circuit court of Cook county, Illinois, against said Alexander Robinson and against David, Cynthia, and Mary Robinson, the remaining children of said Alexander, and by decree entered May 29th, 1848, said court set off and allotted to Joseph Robinson 256 acres, as shown on the following plat, which is attached to the commissioners' report of partition.

(Here follows diagram marked p. 39.)

By deed dated August 3, 1858, and recorded in Book 217 of Deeds, page 300, of Cook county records, Joseph Robinson and Maria,
40 his wife, conveyed to John F. Horton the following-described land: Commencing nineteen chains and fifty-nine links west of the southeast corner of the north section of Robinson'- reservation and two chains and sixty-seven links south of the S. line of said section, thence west ten chains and seventy-two links to a post witness tree, a white elm twenty inches in diameter, bears west twenty-eight links; thence north eighteen chains and sixty-seven links to a post; thence east ten chains and seventy-two links to a post witness described in second deed; thence south eighteen chains and sixty-seven links to the place of beginning, containing by estimation twenty acres, be the same more or less.

Also the following, to wit: Commencing at the southeast corner of the north section of Robinson's reservation, thence south sixty-six degrees west six chains and fifty-one links to a post; thence west

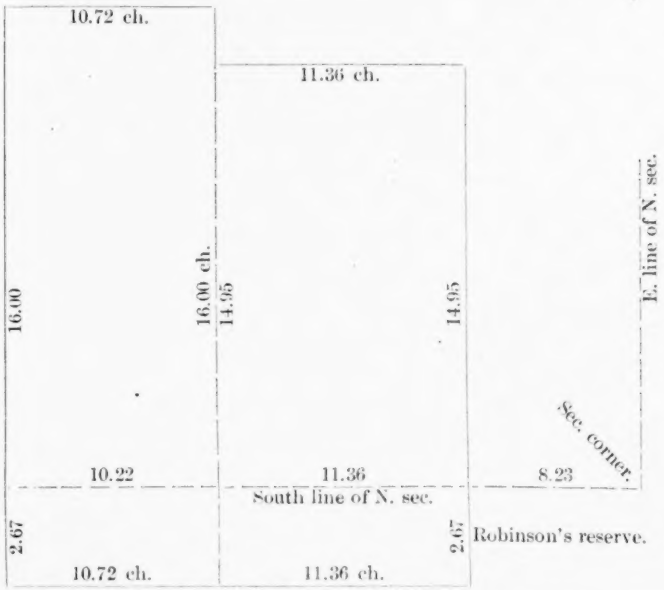


Ro 396 Lonat 1st Leaving p 39

13 chains and sixty-five links to a post, a burr oak six inches in diameter bears S. 36 west 36 links; thence north seventeen chains and sixty-one links to a post of white O. six inches in diam., bears N. 83½° W. 15 links, a black oak 18 inches in diam. bears S. 79° E. 64 links; thence E. 11 chains & 36 links to a burr oak 24 inches in diam.; thence south 14 chains and 95 links to a post; thence E. 8 chains & 23 links to the place of beginning, containing twenty-one & $\frac{1}{10}$ of an acre.

Which premises are part and parcel of the 256 acres set off and allotted to Joseph Robinson and are shown on the following plat of a survey thereof (hereto attached) made by Alexander Walcott, county surveyor of Cook county, Illinois, January 7th, 1870.

41



We have examined and find no conveyances by Joseph Robinson of the 20-acre and 21.1-acre tracts, described in deed last above mentioned, recorded in the recorder's office of Cook county, Illinois, except the deed from said Joseph Robinson to said John F. Horton, recorded July 18th, 1861, in Book 217, page 300.

Chicago, August 8th, 1870.

JONES & SELLERS.

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

Aquela H. Pickering, being first duly affirmed, deposes and says that he is a resident of the county of Cook aforesaid, and that he is

the owner of the following-described premises, situate in the county of Cook and State aforesaid, described as follows, to wit: Those certain parts or portions of Robinson's reservation, so called, in
42 township No. forty (40) north of range No. twelve (12) east of the third principal meridian, commencing nineteen (19) chains and ninety-five (95) links west of the southeast corner of the north section of said reservation and two (2) chains and sixty-seven (67) links south of the south line of said section, running thence west ten (10) chains and seventy-two (72) links; thence north eighteen (18) chains and sixty-seven (67) links; thence east ten (10) chains seventy-two (72) links, and thence south eighteen (18) chains and sixty-seven (67) links to the place of beginning, containing by estimation twenty (20) acres; also commencing at a point in the south line of said north section eight (8) chains twenty-three (23) links west of the southeast corner thereof, running thence north fourteen (14) chains and ninety-five (95) links; thence west eleven chains and thirty-six links; thence south seventeen (17) chains sixty-one (61) links; thence east eleven (11) chains thirty-six (36) links; thence north two (2) chains and sixty-seven (67) links to the place of beginning, containing by estimation twenty (20) acres, being all (except about one acre) of the premises described in and conveyed by a deed from Joseph Robinson and wife to John F. Horton, dated May third, 1858, and recorded in the recorder's office of Cook county, Illinois, *in* July 18th, 1861, in Book 217 of Deeds, at page 300.

He further deposes and says that he has made diligent search for the original deed from the said Joseph Robinson to the said John F. Horton, so recorded as aforesaid, and that he has been unable to find the same and believes the same to have been lost or destroyed; and further deponent says not.

43 AQUILA H. PICKERING.

Affirmed to and subscribed before me this 20th day of July, A. D. 1870.

[SEAL.] WILLET DORLAND,
Notary Public for the City of Chicago,
Cook County, Illinois.

STATE OF ILLINOIS, } *ss.*:
Cook County, }

Fernando Jones, being duly sworn, doth depose and say that he has resided in Cook county, Illinois, since the year 1835; that he has dealt largely in real estate in said county and has been engaged in the real-estate business for the past twenty years; that he is and has been well acquainted with the value of lands throughout said county; that he has been shown a certified copy of a deed from Joseph Robinson and Maria, his wife, to John F. Horton, dated August 3d, 1858, and recorded in Book 217 of Deeds, page 300, of Cook county records, conveying, in consideration of forty-one hundred dollars, twenty (20) acres of land in Robinson's reserve, in the town of Leyden, in said county, described as follows, to wit:

Commencing 19.59 chains W. of the S. E. corner of the N. sec. o Robinson's reservation 2.67 chains S. of the S. line of said section thence W. 10.72 chains to a post witness tree, a white elm 20 inches in diameter, bears W. 28 links; thence N. 18.67 chains to a post; thence E. 10.72 chains to a post witness described in second deed; thence S. 18.67 chains to *a* place of beginning, con. 20
44 acres; also the following, to wit: commencing at the S. E. cor. of the N. sec. of Robinson's reservation, thence S. 66° W. 6.51 chains to a post; thence W. 13.65 chains to a post, burr oak 6 inches in diameter, bears S. 36 W. 36 links; thence N. 17.61 chains to a post of W. oak 6 inches in diameter, bears N. 83½° W. 15 links; — to a black oak 18 inches in diameter, bears S. 9° E. 64 links; thence 11.36 chains to a burr oak 24 inches in diameter; thence S. 14.95 chains to a post; thence E. 8.23 chains to the place of beginning, con. 21.1 acres; that he has been acquainted with said property since the year 1837 and believes the consideration named in said deed to be all said land was worth at the date of said conveyance.

That he has known said Joseph Robinson ever since he was a child, and that he is and was at the date of said deed above the age of twenty-one years and competent to transact business and manage his property; that the amount paid to said Joseph Robinson was the full value of said land, and that said sale was an advantageous one to him; and further this deponent saith not.

FERNANDO JONES.

Subscribed and sworn to before me this 6th day of August, A. D. 1870.

[SEAL.] ALEXANDER SILLER,
Notary Public.

45 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *Jan. 6th*, 1871.

The within certified copy of deed to John F. Horton from Joseph Robinson & Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the 4th article of the treaty with the Chippewa, Ottawa, and Pottawatomie Indians, concluded at Prairie du Chien July 29th, 1829, is respectfully submitted to the Hon. Secretary of the Interior with the recommendation that it be presented to the President for his approval.

E. S. PARKER,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Jan. 21st*, 1871.

The within certified copy of deed is respectfully submitted to the President for his approval.

C. DELANO, *Secretary.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *Jan. 21st*, 1871.

The within deed is hereby approved.

U. S. GRANT.

46 Mr. MAHER: I object to it unless the original is accounted for after. I do not object so much to the introduction of the deed on account of its not being the original, because I believe the loss of this deed can be accounted for, but I do object to it on the ground that the Interior Department, the Commissioner of Indian Affairs at Washington, ought to certify to the copy of the original deed.

Mr. AHRENS: You do not object to that on the ground that they are copies.

Mr. MAHER: There is no use of wasting the time of the court on that.

Mr. AHRENS: I offer a copy of the Horton deed, certified to by the recorder, showing that it was recorded on the 12th day of March, 1873; the same is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office on the 12th day of March, 1873, as document No. 88794, and recorded in Book 216, on page 111.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed my official seal, at Chicago, the eighth (8) day of April, A. D. 1878.

JAS. W. BROCKWAY, *Recorder.*

47 This indenture made this third day of August in the year of our Lord one thousand eight hundred and fifty-eight between Joseph Robinson and Maria, his wife of the town of Leyden county of Cook and State of Illinois party of the first part and John F. Horton of the city of Chicago and county and State aforesaid party of the second part. Witnesseth, that the said party of the first part for and in consideration of the sum of forty-one hundred dollars ($4,100) in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged and the said party of the second — forever released and discharged therefrom) has granted, bargained, sold, remises, released, conveyed aliened and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part and to his heirs and assigns forever, all the following lots, pieces or parcels of land situated in the county of Cook and State of Illinois and known and described as follows, to wit: Commencing nineteen chains fifty-nine links west of the southeast corner of the north section of Robinson's reservation, and two chains and sixty-seven links south of the S. line of said sec. thence west ten chains and seventy-two links to a post witness tree, a white elm twenty inches in diameter bears west twenty-eight links, thence north eighteen chains and 67 links to a post, thence east ten chains and 72 links to a post witness described in second deed, thence south

eighteen chains and sixty-seven links to the place of beginning containing by estimation twenty acres be the same more or less.

48 Also the following to wit: Commencing at the southeast corner of the north section of Robinson's reservation. Thence south sixty-six degrees west six chains and fifty-one links to a post; thence west thirteen chains and sixty-five links to a post a bur O. —diameter, bears south 36 west 36 links thence north seventeen chain and sixty-one links to a post of white O. six inches in diameter bears N. 83½° W. 15 links a black O. 18 inches in diameter bears S. 79° E. 64 links. Thence east 11 chains and 36 links to a burr oak 24 inches in diam. Thence S. 14 chains and 95 links to a post. Thence E. 8 chains and 23 links to the place of beginning containing twenty-one & $\frac{1}{100}$ of an acre.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders, rents, issues and profits thereof and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part either in law or equity, of, in and to the above-bargained premises with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever.

And the said Joseph Robinson and wife party of the first part for their heirs, executors and administrators, do covenant grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the premises above conveyed,

49 as of a good, sure, perfect, absolute and indefeasible estate of inheritence in law, in fee-simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid and that the same are free and clear from all former and other grants, bargain-, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peac-able pos-ession of the said party of the second part his heirs and assigns, against all and every person and persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

JOSEPH ROBINSON. [SEAL.]
ELLEN MARIA ROBINSON. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, justice of the peace in and for said Cook county, in the State aforesaid, do hereby certify that Joseph Robinson and Ellen Maria Robinson, who are personally known to me as the same persons whose name- *is* subscribed to the within instrument of writing, ap-

peared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Ellen Maria Robinson, wife of said Joseph Robinson, having by me been examined separate and apart and out
50 of the hearing of her said husband and the contents and the meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal the 4th day of August, A. D. 1858.

WM. H. GALLUP, [SEAL.]
Justice of the Peace.

No. 46310. Filed July 18th, 1861.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Norman T. Gassett, clerk of the circuit court and *ex officio* recorder in and for said county and State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 18th day of July, A. D. 1861, and recorded in Book 217 of Deeds, on page 300.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 1st day of August, A. D. 1870.

[SEAL.] NORMAN T. GASSETT,
Clerk of the Circuit Court and ex Officio Recorder of Cook County.

[Int'l rev., 5c.]

51 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *January 6th*, 1871.

The within certified copy of deed to John F. Horton from Joseph Robinson and Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the 4th article of the treaty with the Chippewa, Ottawa, and Pottawatomie Indians, concluded at Prairie du Chien July 29th, 1829, is respectfully submitted to the Secretary of the Interior with the recom-endation that it be presented to the President for his approval.

E. S. PARKER,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Jan. 21st*, 1871.

The within certified copy of deed is respectfully submitted to the President for his approval.

C. DELANO, *Secretary.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *Jan.* 21*st*, 1871.

The within deed is hereby approved.

U. S. GRANT.

52 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, D. C., *February* 15, '73.

I, Henry R. Clum, acting Commissioner of Indian Affairs, *fo* hereby certify that the foregoing is a true and literal copy of a certified copy of a deed to John F. Horton from Joseph Robinson and Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the 4th article of the treaty with the Pottawatomie and other Indians, concluded July 29th, 1829, approved by the President of the United States Jan'y 21st, 1871, as the same appears of record in this office.

H. R. CLUM,
Act'g Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *February* 15*th*, 1873.

I, Columbus Delano, Secretary for the Department of the Interior of the United States of America, do hereby certify that Henry R. Clum, whose name appears signed to the foregoing certificate, is now and was at the time of signing the same acting Commissioner of Indian Affairs, and that full faith and credit are due to his official acts as such.

In testimony whereof I have hereunto set my hand and have caused the seal of said department to be affixed on the day and year above written.

[Seal of the Department of the Interior.]

C. DELANO, *Secretary.*

53 No. 88794. Filed for record March 12, A. D. 1873, and recorded Mar. 15, A. D. 1873.

JAMES STEWART,
Recorder.

Mr. AHRENS: I offer in evidence the deposition of Leon Straus. It is a lengthy document, and instead of taking up the time of the court by reading it I will state the substance.

Mr. MAHER: I object to the deposition on the grounds raised by defendants on the taking of the deposition, and also that it is improper, immaterial, and irrelevant, and does not tend to prove the matters in issue in this case, as the John F. Horton mentioned in the deposition had no title or interest to the land in question, nor could he acquire any title under the deed from Robinson, nor could any one acquire a title which was derived through the partition proceedings.

The COURT: I will determine these questions when I come to make up my mind upon the merits of the controversy and let the deposition be considered as read and the points saved.

Said deposition is in the words and figures following, to wit:

The deposition of Leon Straus, of the county of Barbour and State of Alabama, a witness of lawful age, produced, sworn, and examined upon his corporeal oath on the fifth day of May, in the year of our Lord one thousand eight hundred and eighty-four, at the office of A. H. Merrill, in the city of Eufaula, in the county of Barbour and State aforesaid, by me, A. H. Merrill, a commis-
54 sioner, duly appointed by *dedimus potestatem* or commission issued out of the clerk's office of the superior court of Cook county, in the State of Illinois, bearing teste in the name of John J. Healy, Esqr., clerk of the said superior court of Cook county, with the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of Leon Straus, a witness in a certain suit and matter in controversy now pending and undetermined in said superior court of Cook county, wherein Aquila H. Pickering is plaintiff and John Lomax and William Kolze are defendants, in behalf of the said plaintiff, as well *as* upon the cross-interrogatories of the said defendants as on the interrogatories of the said plaintiff, which were propounded to said witness orally, and upon none otl ers.

The said LEON STRAUS, being first duly sworn by me as a witness to said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name — age, where do you live, and what is your occupation?

Answer. My name is Leon Straus; am sixty years old; lives in the city of Eufaula, Alabama, and am minister and teacher.

Inter. 2. Did you ever reside in Cook county, Illinois; if yea, when and what was your occupation while residing there?

55 Answer 2. I lived in Cook county, Illinois, from 1855 to 1868. During the first three years of that time I was clerk in an abstract-of-title office, being in the employ of Thomas B. Bryan; afterward, in the same office, in the employ of Greenbaum & Guthman, who had bought out Mr. Bryan. For the balance of my residence in Chicago I carried on business for myself as a real-estate agent, loan broker, examiner of titles, and conveyancer.

Inter. 3. State whether or not you are acquainted with two certain sections of land in the town of Leydan, Cook county, Illinois, known as Robinson's reserve.

Answer 3. I know said Robinson's reserve. I know from the recorded plat thereof that that tract of land was divided into two parts, called respectively the North section and the South section. I have also been on said reserve.

Inter. 4. What recorded plat do you refer to?

Answer 4. The plat of the subdivisions of said reserve made be-

tween Alexander Robinson and his children, which I saw on record in the recorder's office, in Cook county, Illinois.

(Objected to by defendants' attorney as being secondary evidence and improper.)

Inter. 5. State whether you knew Joseph Robinson in his lifetime, being the Joseph Robinson who was the son of Alexander Robinson, formerly of the town of Leydan, in said Cook county.

(Objected to by defendants' attorney as being leading.)

Answer 5. I did not know Joseph Robinson.

Inter. 6th. State whether you were acquainted with John
56 F. Horton, formerly of said county of Cook; and, if yea, how long and how intimately.

A. 6th. I knew John F. Horton, of the city of Chicago. I was acquainted with him for about three years; was never on terms of intimacy with him. My acquaintance with him was only passing, and had occasionally some business in the office when he was present.

Inter. 7th. State, if you know, if John F. Horton ever went by any other name; and, if so, what; whether he spelled his name in different ways, and how, and whether he had different ways of making his signature; and, if yea, what were the different ways. State fully all the knowledge you have in relation to the subject-matter of this interrogatory.

A. 7th. I know that said John F. Horton had also another name, which was John F. Hortmann. He spelled his name generally John F. Horton, but also on occasions John F. Hortmann, but he always signed his name John F. Horton. I know this from himself, and especially through an incident which transpired in my presence in my office. Some time in the year 1859 or 1860—I cannot give the precise time, but distinctly remember that it was but a short time prior to the secession of the Southern States—the said John F. Horton came to my office in company with one Peter Shimp, a well-known real-estate agent of Chicago. Said Shimp came for the purpose of calling for an abstract of title of some property which I was then making for him. The two men had with them a memo-
randum of some trade they were making between themselves,
57 made out in duplicate. They requested me to witness their signatures. They then signed both papers in my presence, and I witnessed them. The said Horton signed his name John F. Horton on both papers. The abstract for which Mr. Shimp had come was not quite finished. I had some more writing to do to it, and the two gentlemen decided to wait for it until it was ready. While thus waiting they carried on a conversation between themselves, showing a high degree of intimacy to exist between them. Among other things then said, Shimp said to Horton, "John, I think you must be a relative of my wife; you came from Pennsylvania and so does my wife, and your real name is the same as her family name." To this Horton replied, "That is not so; your wife's family name is Hartman," and he spelled the name H-a-r-t-m-a-n,

"but my family name is H-o-r-t-m-a-n-n," spelling the name that way.

"All the members of my family spell the name that way, but I always sign my name John F. Horton." Shimp then asked, "What makes you go by the name of Horton?" to which Horton replied, "In the circles in which I am moving and among the parties with whom I am doing business, it would be a disadvantage to me to be considered a German."

(Objected to by defendants' attorney as being desultory conversation between two parties upon matters and things not connected with the subject-matter of this suit, and that said John F. Horton's statements cannot be used to his own and plaintiff's advantage herein.)

Inter. 8th. State, if you know, whether the said John F. Horton is now living or dead; &, if dead, when and where he died
58 and if he left an estate in Cook county, Illinois.

A. 8th. I know that the said John F. Horton is dead. He died in the city of Chicago, at the end of July or beginning of August, 1861. He left an estate in Cook county.

Inter. 9th. State whether you were familiar with his estate; and, if yea, to what extent you were cognizable of his affairs at the time of his death.

A. 9th. I was not acquainted with his estate in his lifetime and at the time of his decease.

Inter. 10th. State whether said Horton died intestate.

(Objected to by defendants' attorney as being not the proper way to prove such intestacy.)

A. 10th. To the best of my knowledge, the said Horton died intestate, from the fact that I and others made diligent search for a will made by said Horton and could not find any, neither could I find any person who knew anything of the fact that said Horton ever made any will. This search was made in and among the effects of said Horton.

Inter. 11th. State whether, to your knowledge, there was an administration upon the estate of said Horton; and, if yea, in what court and where.

A. 11th. To my knowledge, there was an administration upon the estate of the said John F. Horton in the county court of Cook county, Illinois.

Inter. 12th. State, if you know, who was appointed administrator, and if afterwards any other person was appointed; and, if so,
59 who such other person was and why appointed.

(Objected to by defendants' attorney because it tries to establish by oral testimony that which should properly be a matter of record, and no foundation is laid for the introduction of such proof.)

A. 12th. Within a few days after the death of said Horton Benjamin H. Skinner, of Chicago, applied for letters of administration on the estate of said Horton, as a creditor of the said estate, in said

county court of Cook county, and thereupon said court issued letters of administration to said Benjamin H. Skinner; but in a very short time thereafter William B. Hortmann, a brother of the deceased from Pennsylvania, came to Chicago, and, through Arthur W. Windett, applied to the said court for an order to revoke the letters of administration so issued to said Skinner, and that such letters of administration may be issued to himself. The proceedings in this case transpired in my presence, and upon this application the court revoked the letters of administration to said Skinner, but did not grant any letters of administration to said William B. Hortmann, for the reason that he was a non-resident.

Very shortly thereafter I myself applied to the said court, as a creditor of the estate of said deceased, to be appointed administrator thereof. I was appointed administrator *de bonis non* of said estate and letters of administration *de bonis non* on said estate were issued to me.

(Objected to by defendants' attorney as being improper
60 testimony to prove the matters and things contained in said answer.)

Inter. 13. Have you the original letters of administration *de bonis non* issued to you in said estate or any other original papers relating to said estate or any deeds or other documents relating to any real estate of which said Horton may have died seized? If you have them not, where were they when you last saw them?

A. 13. I have none of the original papers enquired about. The original letters of administration *de bonis non* were lost by me. Other court papers and a deed to property in Winnebago county were filed in the county court of Cook county, and all other deeds relating to the property of said estate I delivered to one Henry H. Dyer, at Chicago, some time in October, 1866, and I have not had or seen them since.

Inter. 14. When, or about when, was the petition for letters of administration upon the estate of said Horton filed in court and the proceedings had in said court? Why was said first administrator removed? State whether it was determined by said court who were the heirs of said Horton, deceased; and, if yea, who were the persons so found to be his heirs? State whether any—&, if yea, what—notice to present claim was published & posted & how; whether you prepared and filed, as administrator *de bonis non* of said estate, an inventory of the property belonging to said estate, so far as the same came to your knowledge or you could ascertain the same; what real estate, if any, was found by you and included in said inventory; what personal property, if any, was included
61 therein? State whether appraisers were appointed by the court; if yea, name them, if you can. State whether or not said appraisers appraised said property & filed an appraisers' bill thereof. If yea, at how much was the personal property appraised therein? What accounts, if any, did you file? What was the amount of the claims allowed & what was realized from the personal property, & what was the deficiency, if any, & what did your ac-

counts filed show in respect to such claim & deficiency, and state generally all you can remember in respect to the proceedings in said court to the course of said administration down to and including any account or accounts you may have filed showing claims against said estate and a deficiency of personal property to pay the same.

(Objected to by defendants' attorney because it is leading in part and too general and sweeping in its terms, embodies too many subjects, and is improper and irrelevant.)

A. 14. Skinner's petition for letters of administration was filed Aug. 2, 1861, heard, and letters issued same day. Upon the petition of William B. Hortmann, alleging that the letters of administration to said Skinner were erroneously issued, because the sixty days had not expired, within which time the next of kin could apply for letters of administration, said petition alleging also that petitioner was brother to deceased—upon hearing of this petition on September 27, 1861, the court issued an order declaring, having found the facts alleged in said petition true, that the letters issued to Skinner were erroneously issued, & they were revoked. It was determined
62 by said court on filing an affidavit of heirship, filed by Wm. B. Hortmann, who were the heirs of the said decedent. They were John Hortman, the father of the deceased; Wm. B. Hortmann & Abraham B. Hortmann, brothers of the deceased; Mary Elizabeth Ritter, wife of Isaac Ritter, & Sarah Ann Bennett, wife of John Bennett, sisters of deceased. I drew six notices dated Nov. 26th, 1861, & posted them myself in six of the most public places if Cook county, to wit, one at the door of the court-house in said county, one at the door of the post-office, one at Randolph Street bridge, one at Clark Street bridge, and the other two in places I do not now remember, all in the city of Chicago, Cook county, notifying all persons having claims against the estate of John F. Horton, deceased, to present them for adjudication at the county court on the 3rd Monday of January, 1862. I also caused the same notice to be published in the Chicago Post (a newspaper then published in the city of Chicago) for six successive weeks. I filed an affidavit in said court as administrator *de bonis non* of said estate that I had posted up six notices; also a printed copy of such notice, attached to which was the printer's certificate of publication, certifying that the said notice was published in the Chicago Post for six successive weeks, to wit, 36 times; that the date of the paper containing the first insertion thereof was November 30th, 1861, & the last January 18, 1862. All of such notices were given by me as administrator *de bonis non* of the estate of said Jno. F. Horton, deceased. I prepared an inventory of all of the property belonging to said estate, as far as the same came to my knowledge and as far as I could ascer-
63 tain, belonging to said estate & filed the same in said court on the 6th day of December, 1861. The following real estate was found by me as belonging to said estate and included in said inventory, to wit: An 80-acre tract of land near Sugar creek, in Winnebago county, Illinois, the description of which I do not

remember, and also two tracts of land *land*, parts of "Robinson's reserve," in Cook county, Illinois, described as follows:

Commencing 19.59 chains west of the southeast corner of the north section of Robinson's reservation & 2.67 chains south of the south line of said section, thence west 10.72 chains to a post witness tree, a white elm 30 inches in diameter, bears west 28 links; thence north 18.67 chains to a post; thence east 10.72 chains to a post witness described in second deed; thence south 18.67 chains to the place of beginning, containing twenty (20) acres; also the following, to wit:

Commencing at the southeast corner of the north section of Robinson's reservation, thence south 66° west 6.51 chains to a post; thence west 13.65 chains to a post; a burr oak 6 inches in diameter bears south 36° west 36 links; thence north 17.61 chains to a post; a white oak 6 inches in diameter bears north 83½° west 15 links; a black oak 18 inches in diameter bears south 9° east 64 links; thence east 11.36 chains to a burr oak 24 inches in diameter; thence south 14.95 chains to a post; thence east 8.23 chains to the place of beginning, containing (21.1) twenty-one & $\frac{1}{10}$ acres. Of the
64 personal property included in said inventory I remember the following: 3 horses, a gold watch, a gold chain, two paintings, a leather trunk, and some wearing apparel.

Appraisers of said estate were appointed by said court by an order dated Oct. 2, 1861, to wit:

James Smith and James Dalton, said appraisers, appraised the personal property of said estate in my presence & delivered unto me their bill of appraisement thereof, which I filed in the said court on the 16th day of December, 1861; the total value of the property thus appraised was $323.16. I filed one account with said estate as administrator *de bonis non* of receipts and disbursements on the 27th day of February, 1863, showing receipts from the sale of said personal property, $735.73, and disbursements, $505.54. On March 26, 1863, I filed an account of the claims allowed by the court amounting to $8,165.40; cash in the hands of the administrator, $239.19; consequently a deficiency of $7,934.21; all of which accounts were audited and approved by the court.

I filed a final account some time in July, 1865, which was also approved by said court, and the court discharged me as administrator of said estate; said account showed a deficiency of assets to pay the debt.

Inter. 15th. State whether any—and, if so, what—proceedings were taken in said court to sell the real estate of which said Horton died seized.

A. 15th. Proceedings were taken in said court to sell the real estate belonging to said estate which had been inventoried. On the 31st of March, 1863, I, as administrator *de bonis non* of the
65 estate of John F. Horton, deceased, filed a petition in said court for the sale of the real estate against John Hortmann, William B. Hortmann, Abraham B. Hortmann, Mary E. Ritter, and Isaac Ritter, her husband; Sarah A. Bennett and John Bennett, her husband, and unknown parties. That petition alleged in substance

that John F. Horton, alias John F. Hortmann, died on or about the first day of August, 1861, intestate and unmarried, and leaving him surviving John Hortmann, his father; William B. Hortmann, his brother; Mary E. Ritter, wife of Isaac Ritter, and Sarah Ann Bennett, wife of John Bennett, his sisters; but there was another brother, Abraham B. Hortmann, who had not been heard from in eight years, and it was unknown whether he was dead or alive, and, if dead, whether he left surviving him a wife and issue, and that these persons named and the persons referred to as unknown are the only heirs of John F. Horton, deceased; that on October 2nd, 1861, letters of administration *de bonis non* upon the estate of said deceased were issued by the county court of Cook county to petitioner; that an inventory of all the real and personal property belonging to the said estate and the bill of appraisement have been duly filed in said court, and a true account, showing a balance on hand from money received from the sale of personal property amounting to $231.19, and that the claims allowed by said court against said estate amounted to $8,165.40, and that there is therefore a deficiency of $7,934.21, besides interest, cost, and charges of administration, and that the personal estate is insufficient to
66 pay said claim; that said deceased died seized of the following-described real estate. The petition then described *verbatim et literatim* the same property as described in the inventory. The petition then prays for an order for the sale of said real estate for the payment of the debts of said deceased. I drew the petition; signed and filed it in court.

Inter. 16th. What was the order of court made in response to said petition for the sale of said real estate, and what proceedings were had in said court prior to the granting of said order, and the date of said order and its contents, as far as you know?

A. 16. The court issued the summons to all the defendants named and referred to in the petition dated March 30th, 1863, returnable on the 3rd Monday in May, 1863; which summons was returned by the sheriff with the following endorsement on the back thereof: "The within-named defendants not found in my county, after diligent search, this 18th day of May, 1863, signed with the sheriff's name, by Homer B. Galpin, deputy." The sheriff's name I do not now remember. I, as administrator *de bonis non* of said estate, on the 30th of March, 1863, filed an affidavit in said court deposing that all the defendant- to the said petition, naming them as hereinbefore named, were non-resident of the State of Illinois. The court, on said last-named day, issued a notice thereupon to all of the said defendants to appear, on the 3rd Monday in May next, in said court, to plead, answer, or demur to the said petition; which said notice was published in the Evening Post, a newspaper published
67 in the city of Chicago, for four successive weeks. I filed the printer's certificate of publication of said notice, with a copy of said notice thereto attached, certifying that the appended notice was published in the said newspaper for four successive weeks, to wit, twenty-four times, the first paper containing the same dated March 31st, 1863, and the last paper May 1st, 1863. The case then

came up for hearing in said court upon the 23rd day of July, 1863, and on the same day the court made and entered an order which in substance declared the petition taken as confessed, none of said defendants having appeared, as against all of said defendants, viz., John Hortmann, William B. Hortmann, Abraham B. Hortmann, Mary E. Ritter and Isaac Ritter, Sarah A. Bennett, and John Bennett, by default. The order further in substance says: It appearing to the court that the material allegations in said petition are true, it is ordered, adjudged, and decreed that the said administrator *de bonis non* (Leon Straus) of the estate of John F. Horton, deceased, in conformity with the statute in such case made and provided, proceed to make sale of all the estate, right, title, and interest which was of said John F. Horton at the time of his decease in and to the lands in said petition (and in this decree) described; that the said administrator *de bonis non* sell said pieces of land separately and in the order in said petition mentioned, for cash and not on credit; that said administrator, before executing any deed or deeds to the purchaser or purchasers thereof, report his proceedings in the premises to this court for approval and confirmation. This decretal order contained a description of the lands identical with the
68 description of the same as set forth in the petition for their sale and in the inventory filed in said court of the lands belonging to the estate of John F. Horton, deceased. The petition for the sale of these lands set them forth in following order, to wit: First, the tract in Robinson's reserve described as containing twenty acres; 2nd, the tract in Robinson's reserve described as containing 21.1 acres, and, lastly, the tract in Winnebago county.

17 Intg. State what you, as administrator *de bonis non*, did in pursuance of such order of sale of said real estate mentioned in your answer to the last interrogatory and which was embraced in the order of sale made by said court.

A. 17. On the 24th day of July, 1863, I drew up six notes, all dated on that day, that I, as administrator *de bonis non* of the estate of John F. Horton, deceased, would, on the 7th day of September, 1863, at the hour of ten o'clock a. m., at the north door of the court-house, in the city of Chicago, in the county of Cook, State of Illinois, sell at public auction, to the highest bidder, for cash, all the estate, right, title, & interest which was of the said John F. Horton at the time of his deceased in and to all the following-described lands & premises, situated in the county of Cook, State of Illinois, to wit. The notices then set forth the descriptions respectively of the said two tracts of land in Robinson's reserve, in Cook county, Illinois, as set forth in the inventory of the estate of said John F. Horton, in the petition for their sale, and in the order of sale thereof, precisely as described and set forth in said inventory, peti-
69 tion, and order of sale. On the same day I commissioned a man by the name of Theodore Jancovins to post up said notices in six of the most conspicuous places in said Cook county. I also caused a copy of said notices to be published in the Chicago Post, a newspaper published in Chicago, for six successive weeks. Said Jancovins did post up the six notices above mentioned in six

of the most public places in said county. Pursuant to said notices I did, on the 7th day of September, at 10 o'clock a. m., 1863, as administrator *de bonis non* of said estate, proceed to sell said property described in said notices at the north door of the court-house, in said Cook county, in said city of Chicago, and offered the said property for sale at public auction, to the highest bidder, for cash, in the order in which they are mentioned in the decretal order and in the notices. At that *that* sale Moses W. Baer offered seven & $\frac{75}{100}$ dollars per acre for the 20-acre tract, amounting to $155.00, & he being the highest bidder at such sale, the said tract of 20 acres of land was stricken off to him at that price. At the same sale the said Moses W. Baer also offered $7.75 per acre, amounting to $163.53, for the tract of land, containing $21\frac{1}{100}$ acres, in the decretal order & the above-mentioned notices described, and he being the highest bidder for the said tract of $21\frac{1}{100}$ acres, the same was stricken off to him at that price. I did not at that time make an attempt to sell the land in Winnebago county.

18 Intg. State whether you made report of said sale to the court & what proceedings were had by said court upon said report. Give contents of said report or the substance thereof, & the contents or the substance thereof of the order of the said court made thereupon.

70 A. On Oct. 6, 1863, I filed a report in the said county court of Cook county, which in substance stated that in pursuance of said decretal order of sale of said land I, as administrator *de bonis non* of the estate of John F. Horton, deceased, did cause the following notice to be posted up in six of the most public places in said Cook county, and also to be published for six consecutive weeks in the Chicago Post, a newspaper published in said city of Chicago. The report sets forth *verbatim et literatim* the notice of sale last referred to. The report then proceeds to say that in pursuance of said notices I, as administrator *de bonis non*, as aforesaid, did, on the 7th day of September, 1863, at the hour of 10 o'clock a. m., at the north door of the court-house, in the said city of Chicago, proceed to make sale of the property in said notices described, and that at the said sale Moses W. Baer bid for the tract of 20 acres, first in said notice mentioned, $7.75 per acre, amounting to $155.00, and he being the highest bidder, *for* said tract of land was stricken off to him by me at that price; also that at the same sale the said Moses W. Baer bid for the tract of land of $21\frac{1}{100}$ acres, second in said notice described, the sum of $7.75 per acre, amounting in all to $163.53, and he being the highest bidder, the said tract of $21\frac{1}{100}$ acres was at that sale also stricken off by me to the said Moses W. Baer. To this report, when I filed it into court, I attached a copy of the said notices of sale, to which was ap-ended the affidavit of Theodore Jancovins, deposing that on the 25th day of July, 1863, he posted up six copies of the ap-ended notices in six of the most public places in said Cook county, designating the places. I also attached to the said report the publisher's cer-

71 tificate of publication of the printed notice, with a copy thereof appended, certifying that such notice was published

in the Chicago Post, a newspaper published in the city of Chicago, for six successive weeks, to wit, 86 times, and that the first paper containing the first insertion was dated July 25, 1863, & the last September 7, 1863. On the 6th day of October, 1863, this report came up for hearing in the said county court, upon my motion as such administrator *de bonis non* of said John F. Horton's estate, for the approval and confirmation of the respective sales of the said two tracts of land in said report contained to the said Moses W. Baer, and the court thereupon, after examining the proofs of posting up and publishing the notices of the sale & being advised in the premises, entered an order stating in substance that the sales of the two pieces of land to the said Moses W. Baer, amounting to $318.53, be confirmed, *at* that said administrator *de bonis non*, to wit, Leon Straus, execute, sign, and deliver a proper deed or deeds of conveyance of the premises sold to the said Moses W. Baer.

Ing. 19. State whether, in pursuance of said sale mentioned in your last answer, you executed and delivered a deed conveying the lands so sold to said Baer; if yea, describe said deed fully.

A. 19. In pursuance of said sale and the clause embodied in the order of confirmation of the court I, as administrator *de bonis non* of the estate of John F. Horton, deceased, made a deed to Moses W. Baer: the said deed was dated on the 6th day of October, 1863; the consideration was $318.53. This deed set forth that I, as such administrator, in the matter of the estate of John F. Horton,
72 deceased, had on the 31st day of March, 1863, filed a petition in the county court of Cook county, Illinois, for the sale of the real estate belonging to the estate of the said John F. Horton, deceased, for the payment of the debts of the said estate; that such proceedings were thereupon had that on the 23rd day of July, 1863, the said court issued the following order and decree. The deed then recited the order of sale fully, to which I have referred in this examination; it also recited in full the notice of the sale, to which I have testified as being given of the sale. The deed then went on stating that in pursuance of said order and notice the said administrator *de bonis non* did, on the 7th day of September, 1863, at the hour of 10 a. m., at the north door of the court-house, in the city of Chicago, in Cook county, offered for sale, at public auction, to the highest bidder, for cash, all the right, title, and interest which was of said John F. Horton at the time of his deceased in and to the premises in this deed described, and that at said sale Moses W. Baer bid $7.75 per acre for the tract of twenty acres in Robinson'- reservation, in Cook county, Illinois, first in said order of sale and notice of sale mentioned, and he being the highest bidder therefor, said tract of land was stricken off to him at that price, amounting to $155.00; also at the said sale the said Moses W. Baer offered for the tract of 21.1 acres in Robinson'- reserve, Cook county, Illinois, in the said decretal order and notice second mentioned, the sum of $7.75 per acre, amounting in all to $163.53, and he being the highest bidder, the said tract of 21.1 acres was also stricken off to the said Moses W. Baer and

he declared the purchaser of both of said tracts. The deed fur-
73 ther recites that on the 6th day of October, 1863, the said administrator *de bonis non* made report of the said two sales to the said Moses W. Baer to the court, and that upon hearing the said report and the court being fully advised in the premises, the court ordered that the said sales to the said Moses W. Baer be confirmed, and that the said administrator *de bonis non* execute, sign, acknowledge, and deliver to the said Moses W. Baer proper deed or deeds of conveyance of the premises so sold, as aforesaid. This deed then further recites that in pursuance of the premises and in consideration of the sum of $318.53, by virtue of the power vested in him as administrator *de bonis non*, as aforesaid, and in obedience to the various orders of the said county court of Cook county entered in this matter, the said Leon Straus, as administrator *de bonis non* of the estate of said John F. Horton, deceased, has granted, bargained, sold, conveyed, and confirmed, and by these presents do- grant, bargain, sell, convey, and confirm, unto the said Moses W. Baer, his heirs and assigns, all the right, title, and interest which was of the said John F. Horton at the time of his decease in and to those certain pieces, tracts, or parcels of land situate in the county of Cook, State of Illinois, known and described as follows, to wit:

Then the deed described the said two tracts of land in Robinson's reserve, Cook county, Illinois, in the same order and by precisely the same descriptions by which they were described in the inventory, petition of sale, order of sale, and notice of sale herein-
before mentioned, adding to said description the words
74 situate in township 40 north, range 12 east, of the third principal meridian.

I signed that deed as administrator *de bonis non* of the estate of John F. Horton, deceased. I attested to the execution of said deed by the words, Witness my hand and seal on the day and year first above written, signing my name thereto, with scroll seal following it. I acknowledged the said deed before a notary public having his office in the same building as mine, whose name I do not now remember.

The Certificate of Acknowledgement.

THE STATE OF ILLINOIS, }
County of Cook, City of Chicago. }

I, —— ——, notary public in and for the said city of Chicago, in the county and State aforesaid, do hereby certify that this day personally appeared before me Leon Straus, personally known to me as the person whose name is signed to the annexed and aforegoing instrument of writing as having executed the same, and acknowledged that as administrator *de bonis non* of the estate of John F. Horton, deceased, he signed, sealed, and delivered the said instrument of writing freely and voluntarily for the uses and purposes therein set forth.

Witness my hand and notarial seal this 6th day of October, 1863.

—— ——.

75 This certificate was signed by said notary, and he affixed his notarial seal in my presence. I then and there delivered said deed so acknowledged to the said Moses W. Baer.

(It is agreed by and between the counsel for the plaintiff and defendants, who are present at this examination, that the defendants shall have the right to make any objections they see fit to interrogatories 14, 15, 16, 17, 18, & 19 and the answers thereto, provided they give notice in writing of the specific grounds of objection thereto to counsel of plaintiff for one day before the hearing thereof.)

Inter. 20. Were you ever on the lands conveyed by said last-described deed to Baer, and did you ever make a comparison of a description of the lands as contained in said deed with the actual location of said lands?

A. 20. Some time in the month of September, 1862, contemplating the filing of a petition for the sale of said lands, I went upon said lands for the purpose of judging of its value and also of ascertaining whether there were any persons on the land in adverse possession of the same, so that if such were the case I might make them defendants to the petition for the sale of the lands and for general purposes. In order to be able to assure myself of being on the very lands for the sale of which I wanted to file a petition and which were inventoried as part of the said estate, I took with me Mr. Charles Herrenkind, a deputy county surveyor of said Cook county, and a deed in my possession from Joseph Robinson
76 and his wife to John F. Horton, which deed contained the same description of the two tracts in Robinson's reservation set forth in the inventory, petition of sale, notice of sale, and order of sale hereinbefore mentioned. The said surveyor then and there traced the lines of said two tracts for me, I acting as chain-bearer, by the description of the same set forth in said deed. I then went over the whole ground included in said lines, making a general inspection thereof. I found no one in possession and took formal possession.

Inter. 21. Are you familiar with the subdivision of the two sections of land known as Robinson's reserve among the patentees, Alexander Robinson and his children?

A. 21. Yes.

Inter. 22. State your knowledge and recollection of the subdivisions of said land, telling all you know about it, the source of your information, and what such subdivisions were.

(Objected to by defendants' attorney as indefinite and otherwise improper.)

A. 22. I have seen and on several occasions examined a plat on file in the recorder's office of Cook county, Illinois, entitled Map of subdivisions of Robinson's reservation in Cook county, Illinois; also a copy of the said map, recorded in the book of maps No. 1 or No. 2 of the records in said recorder's office. I recollect that the premises shown on this map were divided by a line running east and west, or nearly so, in two sections, marked respectively north

section and south section. The section marked north section showed a piece of land in its form rectangular or nearly so. The piece marked south section had for its southerly boundary a line running obliquely in a southwesterly direction, making a triangular piece of said section. I do not recollect whether that oblique line touched the northeast corner of said south section or if said south section extended to any distance by a straight north-and-south line from its northeast corner to an intersection with said oblique line. I recollect having seen the names Alexander Robinson, Joseph Robinson, and also of other persons, written respectively on portions of the land represented by said map.

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Inter. 23. State, if you know, whether any deed of conveyance was given by Joseph Robinson to said John F. Horton in relation to any lands claimed by said Robinson and located in said Robinson reserve; if yea, state all you know about it.

Answ. 23. A deed purporting to be a deed from Joseph Robinson & Maria, his wife, to John F. Horton, conveying the two tracts of land in Robinson's reservation, in Cook county, Illinois, described in the inventory, petition for sale, notice of sale, and decree and order of sale herein mentioned, came into my hands as administrator *de bonis non* of the estate of the said Horton, deceased, among the effects belonging to said estate. I don't remember ever having seen Robinson or his wife. The deed was in form what is known as a warranty deed, was dated August 3, 1858, and was recorded, according to the recorder's endorsement on the back thereof, in the records of Cook county, Illinois, in said recorder's office on July 18, 1861, in Book 217 of Deeds, on page 300, and read in substance as follows:

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This indenture made this 3rd day of August in the year 1858 between Joseph Robinson & Maria Robinson, his wife, of the county of Cook, in the State of Illinois, parties of the first part, and John F. Horton of the county and State aforesaid of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of $4,100 to them cash in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have this day granted, bargained, sold, conveyed, remised, released, aliened and confirmed and by these presents do grant, bargain, sell, convey, remise, release, alien, and confirm unto the said party of the second part, his heirs and assigns all the following-described pieces or parcels of land, situated in the county of Cook, State of Illinois, described as follows, to wit: (The deed then gave the same description of the two tracts of land in Robinson's reservation, in Cook county, Illinois, set forth in the inventory, petition for sale, notice of sale, and decretal order of sale hereinbefore mentioned.) To have and to hold the said described premises with all and singular, the tenements, privileges, and appurtenances thereunto belonging and appertaining to the said party of the second part, his heirs and assigns forever. The deed contained the usual covenants of seizin and warranty and clause of execution in the words, — witness whereof the said party of the first part have hereunto set their hands and affixed their seals on the day and year first above written. Signed to this deed were the names

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of Joseph Robinson and Ellen Maria Robinson and a scroll seal following each name. Appended to this deed was the certificate of acknowledgment by a justice of the peace of said Cook county, Illinois, whose name I do not remember, which was in substance as follows:

STATE OF ILLINOIS, }
County of Cook. }

I, —— ——, a justice of the peace in and for said county of Cook, in the State of Illinois, do hereby certify that Joseph Robinson and Ellen Maria Robinson, his wife, personally known to me as the persons whose names are signed to the foregoing deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument of writing, freely and voluntarily, for the uses and purposes therein set forth; and the said Ellen Maria Robinson, wife of said Joseph Robinson, having been by me examined separate and apart from and out of hearing of her said husband, and after the contents thereof having been by me made fully known and explained to her, acknowledged that she freely and voluntarily executed the said instrument of writing and relinquished her dower to the lands and tenements therein mentioned without fear or compulsion of her said husband, freely and voluntarily, and that she does not
80 wish to retract the same. Given under my hand and seal this the 3rd day of August, 1858.

—— ——.

To this was the signature of the justice of the peace, whose name I do not remember. J. P. followed his name and a scroll seal.

This deed was in my possession from 1861 to 1866, and all the descriptions in the various instruments, documents, and court proceedings hereinbefore mentioned I copied myself *verbatim et literatim* from this deed. Some time in the month of October, 1866, I delivered this deed, together with a number of others relating to the title of said two tracts of land in this deed described, to one Henry H. Dyer, and I have not seen them since, nor do I know where they are.

The lands described in this deed are the same which I sold and conveyed as administrator *de bonis non* of the estate of John F. Horton, deceased, to Moses W. Baer, as hereinbefore stated.

Inter. 24. Are you familiar with the description of land and the location thereof of the estate of said John F. Horton, deceased; and, if yea, where they are located? And if upon Robinson's reserve, in Cook county, what portion thereof?

A. 24. I am acquainted with the lands belonging to the estate of John F. Horton, deceased, situated in Cook county, Illinois. I know the location thereof; they were parts of Robinson's
81 reserve, in Cook county, and parts of the tract marked on the plat of the subdivision of said reservation hereinbefore mentioned with the name of Joseph Robinson. The two tracts of land are adjoining each other, and the largest portion of each of

them lies north of the line that divides the north and south sections of the reservation. A smaller portion of each lies south of said line.

Inter. 25. State whether said John F. Horton, either in said name or the name of John F. Hortmann, was seized of any other lands at the time of his decease than those mentioned in said inventory.

A. 25. As far as I know, he was not.

In. 26. State whether you at any time after the sale of said Horton land by you as administrator became interested in said land as purchaser or otherwise; if yea, from whom did you purchase or obtain such interest, and was any deed executed to you conveying said —?

A. 26. On the 25th day of January, 1864, I purchased the said two tracts of land in Robinson's reserve, in Cook county, of one Charles Kappmeier, and the said Charles Kappmeier and Klara, his wife, conveyed the said property to me by warranty deed. This deed was dated on the 25th of January, 1864, and acknowledged on the same day, and recorded, according to the recorder's certificate endorsed on the back thereof, on the 20th day of July, 1864, in the recorder's office of said Cook county, in Book 290 of Deeds, page 79.

82 The deed was in form precisely like the one from Joseph Robinson and his wife to John F. Horton, described in my answer to interrogatory 23rd hereof. The name of the grantors in this deed were Charles Kappmeier and Klara Kappmeier, his wife; the name of the grantee was Leon Straus; the consideration expressed in said deed was $1,000.00. The wording of the conveyance and habendum clause was precisely the same as in the deed to John F. Horton in this answer mentioned, and the description of the property therein described was precisely the same in words and figures as described in the administrator's deed to Moses W. Baer. This deed was signed and sealed by the said Charles Kappmeier and Klara Kappmeier in my presence, and also acknowledged by the said parties before a notary public. The certificate of acknowledgment by said notary public to this deed attached was in all respects in the same form and wording as the certificate of acknowledgment attached to the said deed from Robinson to Horton herein mentioned, with the exception of the name of the parties and the name of the notary public. The words of attestation by said notary were: Given under my hand and notarial seal this 25th day of January, 1864; signed by the notary in my presence, but I do not recollect his name, and he attached his notarial seal in my presence. This deed was in my possession from the time of its delivery to me by said Kappmeier, on the 25th of January, 1864, until October, 1866, when I delivered it, with the other deeds and papers herein referred to, to Henry H. Dyer. I have not seen it since and do not know what became of it.

83 Inter. 27. State whether you know one Morritz Gotthelf; and, if yea, when and where you knew him. State also whether you ever had any transaction with him in regard to said

Horton land; and, if so, what; whether you sold and conveyed said land to said Gotthelf. State, if you know, where said conveyance now is, if any you made. State also the date, names of grantor and grantee, consideration, and description of property conveyed, and generally the contents of said conveyance, according to your best recollection, and whether under seal, whether acknowledged, and whether, where, and when recorded.

A. 27. I knew Moritz Gotthelf in the city of Chicago. He resided there from the year 1858 and lived there still at the time I removed from Chicago, in year 1868. He was my wife's brother. About the first of April, 1864, I borrowed some money of him that belonged to his wife, and to secure that loan to him I gave him a warranty deed of the said property, referred to in this interrogatory as the Horton lands. This deed was dated April 1, 1864, and acknowledged by me before a notary public on the same day, and was recorded on the 2nd day of April, 1864, in the recorder's office, in said Cook county, in Book 280 of Deeds, on page 151; consideration in said deed mentioned is one thousand dollars. The name of the grantor in said deed was Leon Strauss; name of the grantee, Moritz Gotthelf. The deed conveyed the two tracts of land in Robinson's reserve by precisely the same description by which said prop-
84 erty was described in the deed of Kappemeier to me hereinbefore mentioned. I signed the said deed with my name and affixed a scroll seal to it. The form of the deed and its wording was precisely as that of said deed of said Kappmeier to me. The certificate of acknowledgment attached thereto by the notary who took the acknowledgment was in the usual form, same as in the Kappmeier deed, with the proper words of attestation; signed in my presence by the said notary, whose name I do not remember, and who attached his notarial seal in my presence. I delivered this deed at the time of the transaction to the said Moritz Gotthelf, but some times later it came into my possession again, and in October, 1866, I delivered it, with the other title paper in my possession relating to the said land, to Henry H. Dyer, and I have not seen it since and don't know where it is.

Intg. 28. Do you know who was the grantor of Charles Kappemier, your grantor in the deed by Kappmeier and wife, heretofore mentioned to you, and did you ever see the deed by which your grantor claimed title? If yea, state the date, names of grantors and grantee, consideration, property conveyed, and contents generally as fully as you are able, and whether such deed was under seal, acknowledged, and whether and when & where recorded. State whether the person named as grantor of said Charles Kappmeier is the same or some other person than the one who was grantee in the administrator's deed mentioned by you in the former interrogatories.

Ansd. 28. Moses W. Baer, an unmarried man, was the grantor of Charles Kappmeier. He is the same person named as grantee
85 in the said administrator's deed herein referred to. I drew up the said deed from said Moses W. Baer, who is named as grantor therein, to the said Charles Kappmeier, who is named as

grantee therein. This deed was dated Oct. 7, 1863, and acknowledged by said Moses W. Baer in my presence before a notary public whose name I do not remember. The deed was in form a warranty deed of the same style and wording as the deed from Charles Kappmeier & wife to me herein referred to; consideration was $967.50, & the property conveyed by the said deed was therein described by precisely the same description and in the same words and figures as in the administrator's deed to said Moses W. Baer hereinbefore referred to, and was recorded in recorder's office in Cook county, Illinois, on the 10th day of July, 1864, in Book 290 of Deeds, on page 78. Moses W. Baer signed the said deed in my presence and affixed his scroll seal thereto, and after it was acknowledged delivered it in my presence to Charles Kappmeier.

The certificate of acknowledgment by a notary public, before whom this deed was acknowledged and which was appended to this deed, was in the precise form and which was in form and wording as the one attached to the deed of Leon Strauss to Moritz Gotthelf, heretofore mentioned, except the names of acknowledging was signed by the notary in my presence, who also fixed his notarial seal in my presence. The last I saw of that deed was when I gave it to Henry H. Dyer, in October, 1866. I do not know where it is now.

Inter. 29. State whether to your knowledge the above-
86 named Moritz Gotthelf, subsequent to the conveyance by you to him of said Horton lands which you have mentioned, made any deed of conveyance of said real estate, and whether you had any business connection with such transfer; and, if so, what; whether you saw and read and knew the contents of such deed; and, if yea, state the name of the grantors, grantee, the consideration, description of the property conveyed, whether such deed was under seal, acknowledged, and recorded, when and where; whether said deed was delivered, to whom, when and where, and state generally the contents of such deed.

A. 29. Moritz Gotthelf, at my request and with my full consent, joined by his wife, Babetta Gotthelf, conveyed the said property in the interrogatory referred — as the Horton land to Joseph Gotthelf. I drew up the deed, which was dated August 8th, 1864, and acknowledged by the said Moritz and Babetta Gotthelf before a notary public on the same day. This deed was recorded in the recorder's office of Cook county, Illinois, on the 17th day of September, 1864, in Book 289 of Deed-, page 42. The consideration in said deed was $1,000.00. It was a warrantee deed of precisely the same form and wording as the deed from Charles Kappmeier and his wife to Leon Straus previously mentioned, with the exception of the names of the grantors, which were Moritz and Babetta Gotthelf, his wife, and the name of the grantee, which was Joseph Gotthelf. The deed conveyed the same property by *and* precisely the same description as the deed from Leon Straus to Moritz Gotthelf.

87 The deed was signed in my presence by said Moritz Gotthelf and Babetta Gotthelf, with seals attached to their names, and, after it was acknowledged, delivered by the said grantor to Joseph Gotthelf, in my office, on the day and the time of the trans-

action. This deed was acknowledged by said Moritz and Babetta Gotthelf before a notary public of Cook county, whose name I do not recollect, who in my presence signed the certificate of acknowledgment to this deed attached and affixed his notarial seal thereto. The form of this certificate of acknowledgment was the same as the one attached to the deed of Joseph Robinson and his wife to John F. Horton hereinbefore mentioned.

The last I saw of that deed was when I delivered it with the other title papers to Henry H. Dyer, in October, 1866, and have not seen it since and do not know where it is now.

Inter. 30. State what knowledge you have, if any, of any subsequent conveyance of said land by Joseph Gotthelf and whether you saw any deed relating to said transfer; if yea, when and where you last saw said — and where is said deed now; and, if yea, state the names of the grantors, grantee, and the consideration in said deed, and give a description of the property thereby conveyed, and state generally the contents of such deed; also whether said deed was under seal, acknowledged and recorded, and when and where; and also when and where — to whom the same was delivered, if you know.

A. 30. Joseph Gotthelf and Rachel Gotthelf, his wife,
88 executed a deed of the lands in Robinson's reservation, in Cook county, Illinois, conveyed to the said Joseph Gotthelf by Moritz Gotthelf and his wife, as hereinbefore stated, to Henry H. Dyer, by deed dated October 6th, 1866, recorded November 17th, 1866, in the recorder's deed office of Cook county, Illinois, in Book 364 of Deeds, on page 542. The grantor- in said deed were the said Joseph Gotthelf and Rachel Gotthelf, his wife. The grantee in said deed named was the said Henry H. Dyer. The consideration mentioned in said deed was $1,000.00. The deed conveyed the said two tracts in Robinson's reservation by the following description: All those certain tracts, parts, pieces, or portions of land situated in Cook county, Illinois, in Robinson's reservation, so called, in township 40 north, range 12 east, of the third principal meridian, commencing 19 chains and 59 links west of the southeast corner of the north section of said reservation and 2 chains 67 links south of the south line of said section, running thence west 10 chains and 72 links; thence north 18 chains 67 links; thence east 10 chains and 72 links, and thence south 18 chains and 67 links to the place of beginning, containing, by estimate, 20 acres; also commencing at a point in the south line of said north section 8 chains 23 links west of the southeast corner thereof, running thence north 14 chains 95 links; thence west 11 chains 36 links; thence south 17 chains 61 links; thence east 11 chains 36 links, and thence north 2 chains 67 links to the place of beginning, containing, by estimation, 20 acres, more or less. All the land
89 above-described contains 40 acres, more or less, situate in the town of Leyden, Cook county, Illinois. The lands so described and the *meets* and bounds thereof are the same as those described in the deed from Joseph Robinson and wife to John F. Horton, heretofore mentioned, as traced by me on the recorded map

of said subdivision of Robinson's reservation, heretofore mentioned. I drew this deed for said parties in my office at Chicago; it was a warranty deed of precisely the same form and wording of the conveying and habendum clauses as the deed from Moritz Gotthelf and wife to said Joseph Gotthelf. The sketch of the description of the land in this deed conveyed, intending precisely to cover the meets and bounds of the lands conveyed in the deed from Joseph Robinson to John F. Horton, was furnished to me by a surveyor, whose name was Charles Herrenkind, after he had traced the lines of said land for me, as heretofore testified by me. This deed was signed in my presence by both the said Joseph and Rachel Gotthelf, with seals affixed to their names, and, after the acknowledgment thereof in my presence, delivered by them to the said Henry H. Dyer, upon the day of their execution, in my office in Chicago. The said Joseph and Rachel Gotthelf made acknowledgment of said deed in my presence before a notary public of Cook county, Illinois, in the same building as my office, whose name I do not recollect. His certificate of this acknowledgement to this deed attached was in form and substance the same as that attached to the deeds of
90 Joseph Robinson and his wife to John F. Horton, except the names of the acknowledging parties. The certificate was signed by the said notary in my presence, and in my presence also he attached his notarial seal thereto. I have seen said deed some time in the month of November, 1866, when the said Henry H. Dyer brought it to my office for the purpose of having the minutes thereof taken to be embodied in an abstract of title which I was then preparing for the said Dyer. After taking the minutes of said deed I handed the same back to the said Dyer. I have not seen it since, nor do I know where it is.

Intg. 31. Did you and your wife ever execute and deliver to said Henry H. Dyer any paper-writing concerning said land; if yea, when and where did you last see said paper-writing and where is it now? And state any and what information you have as to where it is now.

A. 31. On the 6th day of October, 1866, I, jointly with my wife, executed and delivered a quitclaim deed to said lands, having been conveyed, as aforesaid, by Joseph Gotthelf and Rachel, his wife, to said Henry H. Dyer. The last time I saw said deed it was in the possession of said Henry H. Dyer, on or about 26th day of November, 1866. I have not seen it since and don't know where it is.

Intg. 32. State, if you remember, the contents or the substance of the contents of said deed, giving the dates thereof, names of the grantor and grantee, the consideration, and the description of the property thereby conveyed, and state whether the same was
91 under seal and acknowledged, when and where recorded, if recorded, when and where and to whom was the same delivered.

A. 32. The said deed was in substance in the following words and figures:

"This indenture made this 6th day of Oct. 1866 by Leon Straus

and Helena Strauss his wife, of the city of Chicago, in the county of Cook, State of Illinois, parties of the first part, and Henry H. Dyer of the same place, party of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of $1.00 to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, have remised, released, sold, conveyed and quitclaimed, and by these presents do remise, release, sell, convey and quitclaim unto the said party of the second part, his heirs and assigns, all their right, title and interest in and to that part of Robinson's reserve in township 40, north, range 12, east of the 3rd principal meridian in Cook county, Illinois, heretofore deeded by the said Leon Strauss to Moritz Gotthelf by deed dated April 1, 1864, recorded in the recorder's office in Cook county, Illinois, in Book 280 of Deeds, on page 151, the object and purpose of these presents is to relinquish the dower right of the said Helena Strauss in and to the premises above mentioned, in witness whereof the said parties of the first part have hereunto set their hands and seals on the day and year first above written."

92 I signed my name, Leon Strauss and my wife signed her name, Helena Strauss to said deed, with seals to our respective names. Both myself and my wife made acknowledgment of its execution on the day of the date thereof before a notary public having his office in the same building with mine, but I do not recollect his name now, and immediately after the acknowledgment thereof delivered the said deed to the said Dyer in my office.

The certificate of this acknowledgment attached to this deed was in the same form and wording and substance, except the name of the acknowledging parties, as the one appended to the deed from Joseph Robinson and his wife to John F. Horton heretofore mentioned.

The deed was recorded in the recorder's office in Cook county, Illinois, on the 17th day of November, 1866, in Book 366, page 611. The last time I saw that deed was on or about the 25th day of November, 1866, after I had taken the minutes thereof for the purpose of embodying the same in the abstract of title I was making for said Dyer, hereinbefore mentioned, when I handed said deed to said Dyer. I have not seen it since, nor do I know where it is.

Inter. 33. State what business relations you may have had with the parties connected with said Horton lands, concerning whom you have testified, and which you have not already stated, and which have aided your memory, or which have been the occasion of your obtaining knowledge in reference to the description and conveyances of said Horton land.

A. 33. During the time I was engaged in the city of Chicago in the business of real-estate agent, examiner of titles, loan
93 broker, and conveyancer I had many acquaintances and friends in the city of Chicago, especially among the Germans, who consulted me on many occasions and employed me to make searches of records and to draw up legal papers for them in matters relating to real estate. I frequently also made abstract of

titles of land in Cook county, Illinois, for these and other parties. The Moses W. Baer, Charles Kappmier, Moritz Gotthelf, and Joseph Gotthelf mentioned in these answers were all friends of mine, who in all such matters employed me to attend to their business in that line, and thus it was that I drew up all the papers mentioned in these answers, both in the court proceedings and the various deeds hereinbefore mentioned, except the deed from Robinson and wife to Horton. I also filled out all the certificates of acknowledgments and had all the deeds recorded and returned to my box in the recorder's office.

Inter. 34. Have you had any paper-writing or memoranda from which you refreshed your recollection concerning the matters about which you have testified; if yea, state who make said memoranda, when it was made, the manner in which it was prepared, in whose handwriting is it, and your knowledge of its correctness. Please attach the original memorandum from which you have refreshed your recollection. State whether or not, after refreshing your recollection from said memorandum, you can say you have an independent recollection of the facts you have testified to, regardless of said memorandum.

94 A. 34. I have a memorandum now in my possession from which I have refreshed my memory in the course of this examination. I took this memorandum myself from the original deeds and from the original records in the recorder's office and in the office of the clerk of the county court of Cook county, Illinois, mentioned in this examination. This memorandum consisted of minutes which I took from said various instruments and records during the months of October and November, 1866, for the purpose of preparing from the said minutes a partial abstract of the title of the two tracts of land in Robinson's reserve, Cook county, Illinois, for and at the request of Henry H. Dyer, said partial abstract showing chain of title from Joseph Robinson down to said Dyer. The memorandum I used during the course of this inquiry are the identical minutes so taken by me at that time. (Said memorandum is here delivered by the witness to the commissioner, and is hereto attached, marked Exhibit A, and made a part of these deposition-.) It is in my own handwriting and I have had it in my possession ever since the said time, kept among my other papers. I know that it is correct. I have a full and independent recollection of all the facts I have testified to, after refreshing my memory from said memorandum, independent and regardless of the same.

Inter. 35. State any fact going to show your accuracy of recollection of the wording of the deeds.

A. 35. I know that I perfectly remember the wording of the v
rious deeds to which I have testified from the facts that t'
95 deed from Joseph Robinson and wife to John F. Horton was a printed form filled up, which was published or printed by the printing office of the Chicago Democrat, a newspaper then published in Chicago, owned by John Wentworth. All the subsequent deeds herein testified to by me were printed blanks filled up by myself in my office. These blanks were printed by Culver, Page &

Hoyne, a printing and stationary house in said city of Chicago. I used the said blanks in my office, in the course of my business, for many years, exclusive of all others, and know their wording, including the certificate of acknowledgment, by heart. I also know that said blank of the said Robinson's deed, which came from the Democrat office, was in its wording precisely the same as those that came from Culver, Page & Hoyne.

First cross-interrogatory. When you left Chicago where did you go, and how long did you stay?

A. X 1. To New York, and stayed until 1869.

Inter. X 2. When you left New York where did you go, and how long did you stay?

A. X 2. To Charleston, South Carolina, and stayed until June, 1871.

Inter. X 3. When you left Charleston, S. C., where did you go, and how long did you stay?

A. X 3. To Cincinnati, Ohio, and stayed until 18th of October, 1871.

96 Inter. X 4. When you left Cincinnati where did — go, and how long did you stay?

A. X 4. To St. Louis, Mo., and stayed until January 1st, 1875. I then went to Pine Bluff, Ark., and stayed until January 1, '78. I then went to Calvert, Texas, and stayed until April 6th, 1881. I then went on a general traveling tour in Ohio, Indiana, & Illinois, and on the 25th of August, 1881, I came to Eufaula, Alabama, where I am still residing,

Inter. X 5. How long have you followed the profession of a minister?

A. X 5. Since September 1st, 1881, in the Jewish church of Eufaula. I have been a teacher for the last six years.

Inter. X 6. What other business have you followed since you left Chicago?

A. X 6. I was engaged in St. Louis as a cashier and book-keeper in the store of one A. Hirsch, dry-goods merchant, until I went to Pine Bluff, where I was engaged in carrying on a small grocery store. During my stay at Calvert, Texas, I kept a private school.

Inter. X 7. How many communications did you receive from Chicago in reference to this case, and from whom?

A. X 7. I received five communications from plaintiff's attorneys.

Inter. X 8. Did they not state to you fully what they expected to prove by you in this case?

(Objected to by plaintiff's attorney for the reason that the testi-
mony sought is the contents of letter, which have not been
97 shown to be lost, and believe it is secondary.)

A. X 8. They did not.

Inter. X 9. Have you those letters with you?

A. X 9. I have not them with me; I may be able to find them.

Rebutting Interrogatories.

Inter. 1. What was the character of the communications you received from the pl'ff's attorneys in respect to your testimony in this case?

(It is agreed by plaintiff's attorneys that defendants may at any time interpose objection to this interrogatory and the answer thereto by giving one day's notice to plaintiff's attorney of the grounds of said objection.).

Rebut. A. 1. The first letter was an inquiry if I had any knowledge and recollection of John F. Horton and the property herein testified about and of deeds and other papers referring thereto. The 2nd letter was an inquiry if I would be willing to be a witness. Then I had three telegrams, one asking me to give name of some attorney to act as commissioner, another asking me if I would be willing to come to Chicago to testify, the other requesting me to name an attorney in Eufaula to represent them in this examination.

98 LEON STRAUS.

I, A. H. Merrill, of the county of Barbour and State of Alabama, a commissioner duly appointed to take the deposition of Leon Straus, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Leon Strauss as a witness in this suit between the said Aquila A. Pickering, plaintiff, and the said John A. Lomax and William Kolze, defendants, — so far as he should be interrogated concerning the same; that the said deposition was taken at my office, in the city of Eufaula, in the county of Barbour and State of Alabama, on the 5th day of May, A. D. 1884, and that after said deposition was taken down by me, as aforesaid, the interrogatories and answers thereto as written down were read over to the witness, and thereupon the same *was* signed and sworn to by the said deponent, Leon Straus, before me, the oath being administered by me as such commissioner at the place and on the day and year last aforesaid.

A. H. MERRILL, [SEAL.]
Commissioner.

I, A. H. Merrill, commissioner as aforesaid, hereby certify that I am entitled to the sum of fifty (50.00) dollars for taking these deposition-, and the witness, Leon Straus, is entitled to twenty-five dollars for attending as a witness.

A. H. MERRILL,
Commissioner.

99 EXHIBIT A.

Joseph Robinson & Maria, his wife, signed & ack. Ellen Maria, to John F. Horton.	W. D., Aug. 3d, 1858; July 15, 1861; 217, p. 300; $4,100.00.

Conveys all the following-described piece of land, viz:

Commencing 19.59 chains W. of the S. E. cor. of the N. sec. of Robinson's reservation and 2.67 chains S. of the S. line of said sec., thence W. 10.72 chains to a post witness tree, a white elm 30 inches in diameter, bears W. 28 links; thence N. 18.67 chains to a post; thence E. 10.72 chains to a post witness described in second deed; thence S. 18.67 chains to the place of beginning, containing 20 acres; also the following, to wit: commencing at the S. E. cor. of the N. sec. of Robinson's reservation, thence S. 66° W. 6.51 chains to a post; thence W. 13.65 chains to a post, a burr oak 6 inches in diameter, bears S. 36 W. 36 links; thence N. 17.61 chains to a post, a white oak 6 inches in diameter, bears N. 83½° W. 15 links, — a black oak 18 inches in diameter, bears S. 9° E. 64 links; thence E. 11.36 chains to a burr oak 24 inches in diameter; thence S. 14.95 ch'ns to a post; thence E. 8.23 chains to the place of beginning, containing 21.1 acres.

Ack. before J. P., Cook Co., Ills.

100 In the County Court of Cook Co., Ill.

Probate of Estate of JOHN F. HORTON.

Pet. for letters of ad. filed Aug. 2, 1861, represents that John F. Horton died at Chicago on or about Aug. 1, 1861, intestate, leaving him surviving no widow, children, or relatives in this State, and that petitioner is a cred'r; letters of administration granted to Benjamin H. Skinner issued, dated Aug. 2, 1861; bond for $3,000.00 filed same day.

Petition for removal of Benjamin H. Skinner, adm'r, &c., and for letters of adm. by William B. Hortmann, filed Sep. 18, 1861, alleges death of John F. Horton on or about July 30, 1861, leaving no widow or children surviving him; that petitioner is the eldest brother of dec'd; that s'd Skinner on Aug. 2, 1861, procured letters of adm'n before such letters could lawfully issue; prays that said Skinner be removed, and that said letters of adm'n be revoked. Ordered Sep. 18, 1861—vol. Q, p. 437—that citation be issued to Benjamin H. Skinner to appear and show cause why administration should not be granted to William B. Hortmann; returnable Sep. 19, inst., at 10 a. m.; citation issued, dated Sep. 18, 1861; returned Sep. 19, 1861: Served on B. H. Skinner. Order Sep. 27, 1861—vol. Q, p. 459: It appearing that administration of the estate of John F. Horton, dec'd, heretofore granted to Benjamin H. Skinner, was erroneously granted, orders that the said letters of admr. be revoked, and that the citation be dismissed.

101 Petition for letters of administration *de bonis non*, filed Oct. 2, 1861, by Leon Straus as creditor, represents that John F. Horton died at Chicago on or about Aug. 1, 1861, intestate; that letters — administration of the estate of s'd dec'd *has* been granted to Benjamin H. Skinner, which have been revoked.

That said dec'd left him surviving no widow, but his father, John Hortmann, and his brother-, William B. Hortmann and Abraham B. Hortmann, and Mary Elizabeth, wife of Isaac Ritter, and Sarah Ann, wife of John Bennett. as his sisters. Letters of adm'n *de bonis non* granted to Leon Straus Oct. 2, 1861; bond for $3,000 filed same day; notice dated Nov. 28, 1861, to present claims for adjudication on the 3d Monday of January (1862) next; attached is certificate of the publisher of the "Chicago Post," a newspaper published in the city of Chicago, that above notice was published in said newspaper for 6 successive weeks, to wit, 36 times; date of 1st paper containing same was Nov. 30, 1861, and the last Jan'y 18, 1862; also affidavit by Leon Straus that on Nov. 28, 1861, he posted copies of above notice in 6 of the most public places (designated) in Cook Co., Ill.

Inventory filed Dec. 6, 1861, contains a list of personal property and also a piece of land in Cook Co., Ill., commencing at 19.59 chains W. of the S. E. cor. — the north sect. of Robertson's reservation and 2.67 ch'ns S. of the south line of said sec., thence W. 10.72 chains to a post w*itn*ess tree, a white elm 20 inches in diameter, bears W. 28 links; thence N. 18.67 chains to a post; thence E.

102 10.72 chains to a post witness described in 2nd deed; thence S. 18.67 chains to the place of beginning, containing 20 acres; also the following, to wit: commencing at the S. E. corner of the N. sec. of Robinson's reservation, thence S. 66° W. 6.51 chains to a post; thence W. 13.65 chains to a post, a burr oak 6 inches in diameter, bears S. 36° W. 36 links; thence N. 17.61 chains to a post, a white oak 6 inches in diameter, bears N. 83¼ W. 15 links — a black oak 18 inches in diameter, bears S. 9° E. 64 links; thence E. 11.36 chains to a burr oak 24 inches in diameter; thence S. 14.95 chains to a post; thence E. 8.23 chains to the place of beginning, containing 21.1 acres; also an 80-acre tract in Winnebago Co., Ill.

Ordered Oct. 2, 1861, vol. Q. p. 477, appointing James Smith and James Dalton appraisers.

Appraisers' bill of appraisement filed Dec. 16, 1861. Personal property valued at $323.16.

Sale bill filed Dec. 26, 1861, shows amount realized from the sale of the personal property, $735.73.

Adm'r's acc't filed and approved Feb'y 27, 1863, shows amount in his hands, $239.19. Adm'r's acc't filed March 26, 1863, shows that the amount of claim allowed is $8,165.40; deficiency, $7,934.21.

)3 In the County Court of Cook Co., Illinois.

EON STRAUS, Adm'r *de bonis non* of the Estate of John F. Horton, Deceased,
vs.
)HN HORTMANN, WILLIAM B. HORTMANN, AB. R. B. Hortmann, Mary E. Ritter and Isaac Ritter, Her Husband; Sarah A. Bennett and John Bennett, Her Husband, and Unknown Parties. } Petition to sell Real Estate.

Petition filed March 31, 1863, alleges that John F. Horton, alias ohn F. Hortmann, died on or about August 1, intestate and unmar-ied, and leaving surviving him John Hortmann, his father; Wil-am B. Hortmann, his brother; Mary E. Ritter, wife of Isaac Ritter, nd Sarah Ann Bennett, wife of John Bennett, his sisters; that here was another brother, A. B. Hortmann, who was not heard from or 8 years, and that it is unknown whether he is dead or alive; if ead, whether he left him surviving a wife and issue, and that the ersons named and the persons referred to as unknown are the only eirs of John F. Horton, deceased.

That on Oct. 2, 1861, letters of administration *de bonis non* upon aid estate *was* issued from the Co. court of said Cook Co. to peti-ioner; that an inventory and bill of appraisement have been filed n said court, and a true account, showing balance on hand of money eceived from sale, personal estate amounting to $231.19, and the claims by said court allowed amount to $8,165.40, and that 04 there is therefore a deficiency of $7,934.21, besides interest, costs, and charges of administration, and that the personal state is insufficient to pay said claims; that said deceased died eized of the following real estate. Follows the same description of ll the real estate as in the inventory. Prays for order of sale of aid real estate. Summons issued, dated March 30, 1863, to all of aid def'ts; returnable 3 Monday of May next. Returned: "The ithin-named defendants not found in my county, after diligent earch, this 18th day of May, 1863."

Affidavit filed March 30, 1863, of the non-residence of said def'ts, ohn Hortmann, William B. Hortmann, Mary E. Ritter and Isaac itter, her husband; Sarah A. Bennett and John Bennett, her hus-and; A. B. Hortmann, and unknown parties.

Notice to all defendants to appear on the 3d Monday of May, 1863. ttached is a certificate of the publishers of "The Evening Post," a ewspaper published in the city of Chicago, that above notice was ublished for 4 successive weeks, to wit, 24 times, in said paper, he 1st paper containing same dated March 31, 1863, and the last aper May 1, 1863.

Order July 23, 1863, vol. S, p. 488: Petition taken as confessed s to def'ts John Hortmann, William B. Hortmann, A. B. Hortmann, lary E. Ritter and Isaac Ritter, Sarah A. Bennitt and John Ben-itt by default. It appearing to the court that the material alle-ations in said petition are true, orders and decrees that said adm'r,

in conformity with the statute, &c., proceed to make sale of all the estate, right, title, and interest which was of said John F.
105 Horton at the time of his decease in and to the lands in said petition and above described; that said adm'r sell said pieces of land separately and in the order in said petition mentioned, for cash and not on credit, and that said adm'r, before executing any deed, report his proceedings to the court for approval and confirmation.

Report of sale filed Oct. 6, 1863, reports that in pursuance of said decree said adm'r *de bonis non* did cause the following notice to be posted and published, viz:

Notice, dated July 24, 1863, that said adm'r *de bonis non* will, on the 7th day of Sept., 1863, at 10 a. m., at the north door of the court-house, in the city of Chicago, Cook Co., Ill., sell at public auction, to the highest bidder, for cash, all the estate, right, title, and interest which was of the said John F. Horton at the time of his decease in and to the premises. (Follows the same description as in inventory, petition, & decree.) Attached is affidavit of Theodore Jancovins that on July 25, 1863, he posted up copies of above notice in 6 of the most public places in said Cook county (designated); also certificate of the publishers of the "Chicago Post," a newspaper published in the city of Chicago, Ill., that the above notice was published for 6 successive weeks, to wit, 36 times, in said newspaper; that the 1st paper containing same was dated July 25, 1863, and the last Sept. 7, 1863.

That, in pursuance of said notice, on Sept. 7, 1863, at 10 a. m.,
106 at the north door of the court-house, in the city of Chicago, Ill., he sold to Moses W. Baer the 20-acre piece first above described for $7.75 per acre, amounting to $155.00; that he also sold to the same person said 21 1/10 acres second above described for $7.75 per acre, amounting to $163.53.

Order Oct. 6, 1863, vol. F, p. 39: That the sale of the first two pieces in said report mentioned, amounting to $318.53, be confirmed, and that the said adm'r execute the proper conveyances of the premises sold as aforesaid.

Leon Straus, adm'r *de bonis non* of the estate of John F. Horton, dec'd, to Moses W. Baer.	Admr's deed, dated Oct. 6, 1863, and rec. Oct. 6, 1863, Book 266, p. 12. Consid., $318.53.

Sets forth decree and notice of sale in full.

Recites that in pursuance of said decree and notice said adm'r did, on Sep. 7, 1863, at 10 a. m., at the north door of the court-house, in the city of Chicago, Ill., — all the right, title, and interest which was of the said John F. Horton at the time of his decease in and to the premises hereinafter described to said party of second part for $7.75 per acre. Conveys same premises described precisely as in the deed from Robinson to John F. Horton, with the addition of "situate in T. 40 N., R. 12 E., of 3 P. M."

107 Moses W. Baer (unmarried) to Charles Kappmeier. } W. D., Oct. 7, 1863. Rec. July 10, 1864, in Book 290, p. 78. $967.50.

Conveys same premises and by the same description as last.

Charles Kappmeier & Klara, his wife, to Leon Straus. } W. D., dated Jan'y 25, 1864. Recorded July 20, 1864, in Book 290, p. 79. Consid., $1,000.00.

Conveys same property and by same description as the last. Acknowledged befr. not. pub., Chic., Ill.

Leon Straus to Moritz Gotthelf. } W. D., dated Ap'l 1, 1864. Recorded Ap'l 2, 1864, in Book 280, p. 151. Consid., $1,000.00.

Conveys same premises by same description. Ackn. bef. not. pub.

Moritz Gotthelf & Babetta, his wife, to Joseph Gottehlf. } W. D., dated Aug. 8, 1864. Recorded Sept. 17, 1864, in Book 289, p. 42. Con., $1,000.00.

Conveys same premises by the same description. Ack. before not. pub.

108 Joseph Gotthelf & Rachel, his wife, to Henry H. Dyer. } W. D., dated Oct. 6, 1866. Recorded November 17, 1866, in Book 364, p. 542. Consid., $1,000.00.

Conveys those certain parts or portions of Robinson's reservation, so called, in T. 40 N., R. 12 E., of 3 P. M., commencing 19 chains and 59 links west of the S. E. cor. of the N. sec. of said reservation and 2 chains and 67 links S. of the S. line of said sec., running thence W. 10 chains and 72 links, thence N. 18 chains and 67 links, thence E. 10 chains and 72 links, and thence S 18 chains and 67 links to the place of beginning, containing by estimation 20 acres; also, commencing at a point in the south line of said N. sect. 8 chains and 23 links W. of the S. E. cor. thereof, running thence N. 14 chains and 95 links, thence W. 11 chains 36 links, thence S. 17 chains and 61 links, thence E. 11 chains and 36 links, and thence N. 2 chains and 67 links to beginning, containing by estimation 20 acres. All the land above described contains 40 acres, more or less, situated in the town of Layden, Cook Co., Ill. Ack. before not. pub.

Leon Straus & Helena, his wife, to Henry H. Dyer.	Deed, dated Oct. 6, 1866. Recorded Nov. 17, 1866, in Book 366, p. 611. Consid., $1.00.

109 Remises, releases, sell-, convey-, and quitclaim- all right, title, and interest in and to that part of Robinson's reserve in T. 40 N., R. 12 E., of 3 P. M., in Cook Co., Ill., heretofore deeded by Leon Straus to Moritz Gotthelf by deed dated Ap'l 1, 1864, recorded, &c., in Book 280, p. 157. The object and purpose of these presents is to relinquish the dower right of said Helena Straus in & to the above-mentioned premises.

—— ——, *Not. Pub.*

FERNANDO JONES, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. AHRENS:

Q. What is your name?
A. Fernando Jones.
Q. What is your occupation?
A. Examiner of titles to real estate in Cook county.
Q. How long have you resided in Chicago—since when?
A. Since May, 1835.
Q. Did you know the Joseph Robinson who made the deed in question to John F. Horton?
A. Yes, sir.

110 Q. I wish you would state to the court what, if anything, you had to do about having a certified copy of the deed from Joseph Robinson and wife to John F. Horton approved by the President of the United States.

A. In making an examination of the title for Mr. Pickering I told him it did not seem that the sale had been approved by the President; that I would ascertain if it had been, and I did ascertain that in Washington, it had never been approved. I advised Mr. Pickering to have the approval of that sale from Joseph Robinson, and, not having the original deed, I procured a certified copy, not that the deed was necessary, or a copy of it, but the approval of the sale was not an approval of the deed, but as the department, very properly, was very careful——

Q. Just state the facts—what you did.

A. I am not allowed to state why I procured it.

Q. Well, if the court would like to hear you state it, I have no objection.

A. In accordance with the regulations of the Department *in* the Interior and Indian Department, which was very concise and particular, I procured a copy of the conveyance from Joseph Robinson and made representations to the department to procure the approval of that sale.

Q. You heard me read the deeds with the certificates, your affi-

davit, Mr. Pickering's affidavit, and a certificate of the officers annexed; you heard me read that a little while ago, didn't you?

A. Yes, sir.

111 Q. You may state, if you can, from your recollection, whether they are correct copies of what you saw.

Objected to. Objection overruled; to which ruling of the court counsel for defendant then and there duly excepted.

A. They are, substantially, copies. I recognize them as the same that I seen officially.

Q. You may state whether or not the statements made in your affidavit, attached to the copy which you forwarded, were true of your own knowledge.

Objected to. Objection sustained; to which ruling of the court counsel for complainant then and there duly excepted.

Q. I will ask you to state, then, as near as you can from your recollection, if you refreshed your recollection from these, what was included in the affidavit made by you which was attached to the deed you forwarded to the department at Washington.

Objected to.

Mr. AHRENS: I want to show by the witness himself that the statements were true.

The COURT: Ask his as to those matters. If it is necessary for you to prove the facts contained in that affidavit, ask him about them as you would if he were called in regard to them.

Mr. AHRENS:

Q. State what you said in the affidavit attached to that deed.

112 The COURT: He has already stated the affidavit is a substantial copy, which he presented.

Q. State whether or not you know about the terms or consideration and circumstances of the sale of this land in question from or by Robinson to Horton.

A. As I understood, the department at Washington were particular about passing these titles, and I made representations sufficient to cover any objection which had been made to prior applications——

Objected to.

(Witness continuing:) And statements of the conveyances and description of the property, the consideration, the value of the property, and whether it was for the interest of the Indian that he should sell, and very particular that he hadn't made any former conveyance of the same premises; and, in order to make that satisfactory, I got a certified copy of the conveyances giving the proper description, and had Mr. Pickering make a survey of this particular property.

Mr. MAHER: I object to this method of the witness giving his testimony.

Objection sustained.

Q. Do you remember what the consideration was for the conveyance from Robinson and wife to Horton?

A. Oh, I do not think my memory has that very distinctly.

Q. Can you refresh your recollection by looking at this copy of the affidavit which I have offered in evidence?

Mr. MAHER: I object on the ground that it is not shown
113 Mr. Jones had anything to do with the transaction between Robinson and Horton, as it was years after he was called upon to testify.

Objection overruled. Exception on behalf of the defendant.

A. My impression is now it was $4,000.

The COURT:

Q. Did you know anything personally of the transaction between Robinson and Horton, or did you derive your information from the papers that subsequently came to your hands?

A. I derived my information from the papers, and then from Joseph Robinson aside from that.

Q. You saw him about it?

A. I saw him about it before making the application.

Q. Was he living at the time you got this record, the approval of the President?

A. My memory is he was, but I don't remember exactly.

Q. Did you see him in connection with this transaction?

A. Yes, sir.

Mr. AHRENS:

Q. Now, have you any recollection what the consideration was?

A. The Robinsons did not put their patent, which made that restriction, upon record; so it seems to me when there was some conveyance made parties were not aware of that restriction, and were compelled to either get another deed, have the transaction approved, or to have the transaction approved as this was done.

Mr. MAHER: Objected to, and motion to strike it out.

Q. Can you state what the consideration was from your
114 recollection, after refreshing it from an examination of the paper in your hand?

A. I stated I thought about $4,000; I see by the deed here $4,100.

Q. The consideration?

A. Yes, sir; which confirms my remembrance.

Q. Now you may state, if you know, whether that was the fair value of the land.

The COURT: Mr. Maher, do you attack any of these papers, or do you propose to offer any proof tending to show the transaction between Robinson and Horton was not valid and in good faith?

Mr. MAHER: I do not intend to offer any proof for want of consideration on that point at all. I know nothing about the *bona fides* of the transaction or the consideration.

Mr. AHRENS:

Q. State whether or not you received a paper from Washington with the approval of the President upon it after forwarding it to Washington.
A. I did.
Q. What did you do with it?
A. I gave it to Mr. Pickering some time after having received it.
Q. Before the fire?
A. Before the fire.
Q. You may state whether or not you have made a personal examination of the records of this partition proceeding between Joseph Robinson and his father and his brothers and sisters.
A. I did.

The COURT:

Q. Was that in this county?
A. In this county, in the town of Leyden.
Q. Was the partition suit in this county?
A. Yes, sir.

115 It is admitted there was a conflagration in the city of Chicago on October 8th and 9th, 1871, in which all the records in the court and recorder's office were destroyed.

Q. I show you an abstract of title. State whether that was made by your firm or not prior to the fire.
—. It was.
Q. You may state how that abstract was made and for whom. You may state whether or not that was made in the ordinary course of business prior to the destruction of the records for parties interested in that land.
A. It was.

Mr. AHRENS: I offer the abstract in evidence, so far as it shows partition proceedings.

Mr. MAHER: I object to all evidence relating to partition proceedings on the ground that the treaty provides that the lands granted to Alexander Robinson for himself and children are never to be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President. The patent issued to Alexander Robinson for himself and children provided that the land shall never be leased or conveyed by him, them, his or their heirs or assigns to any person whatever without the consent of the President, and that there was no power whatever between the heirs of Robinson or Robinson himself to make a partition, and they nor he had no power, and no court can do what they could not do themselves. No pretence that any sanction was ever obtained

for any partition. No deeds made by any of them of their own
116 volition or under order of the court would be valid. They had no jurisdiction and the court had no jurisdiction.

The COURT: I will reserve the question; it may go in, subject to the objection. The same is in the words and figures following, to wit:

Abstract of title to sublot 22 of lot 1 and sublot 8 of lot 2, in assessors' subdivision of south section of Robinson's reservation.

Plat of premises in question.

(Here follows diagram marked p. 117.)

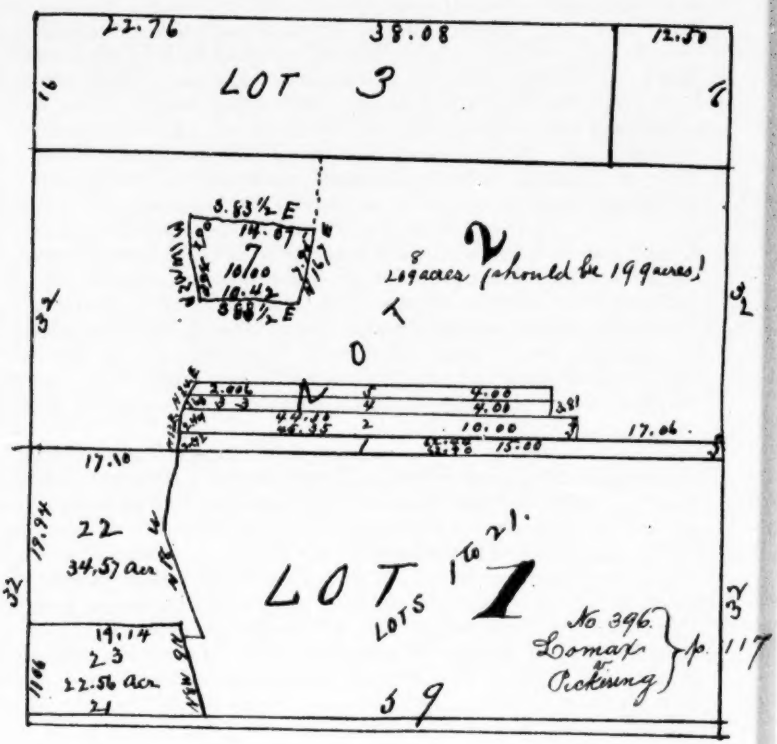
118 *Decree.*

Cook County Court of Common Pleas.

JOSEPH ROBINSON
vs.
ALEXANDER ROBINSON, DAVID ROBINSON, CYNTHIA ROBINSON, and MARY ROBINSON. } Case No. 1078.

Petition, filed February 22, 1847, alleges that complainant and said defendants, David, Cynthia, and Mary Robinson, being minors and children of said Alexander Robinson, are seized in fee-simple, in possession as tenants in common in equal, undivided fifths, *and* in premises beginning on the N. boundary of a survey of 640 acres of land granted to Claud La Frambois by the treaty between the United States of America and the united nations of Chippewa, Ottawa, and Pottawatomie Indians 16.05 chains west of the N. E. corner thereof, thence west with S. boundary of this survey and N. boundary of Claud La Frambois survey 80 chains to the S. W. corner of the survey; thence north 80 chains to corner of this survey; thence W. 19 chains to a flag pond, 28.50 chains to a prairie stone in the pond for a corner of this survey; thence north 80.18 chains to the N. W. corner of said survey; thence east with N. boundary of survey 20.66 chains to the westwardly bank of Des Plaines river, 259 links wide, running from N. W. to S. E. 47.55 chains to the bank of a slough coming from the N. W. 80.15 chains to the N. E. corner of this survey; thence south 80 chains to the beginning, being in town 40 N., R. 12 E, 3 P. M., 1,280 acres;
that said land was granted to said Alexander Robinson and
119 his children by a treaty concluded by and with the Government of the United States and the united nations of Ottawa, Pottawatomie, and Chippewa Indians, at Prairie du Chien, on July 29th, 1829; that complainant is one of the children of said Alexander Robinson; that said David, Cynthia, and Mary are also children of said Alexander Robinson and minors; prays for partition of premises above described.

Summons issued, dated Feb'y 22nd, 1847, to Alexander, David, Cynthia, and Mary Robinson, returnable on the first Monday of


22.76
38.08
12.50
LOT 3
16
17
S 63½ E
14.87
7
10.00
10.42
S 63½ E
2 19 acres (should be 19 acres)
T
O
32
32
2.00
4.00
4.00
381
42.35
42.35
2
10.00
17.06
17.10
75.00
22
34.57 acr
19.94
LOTS 1 to 21.
LOT 1
19.14
23
22.56 acr
21
1166
No 396
Lomax
St
Pickering
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59

May next, and returned: "Executed this 21st day of April, 1847, by reading the within in presence of the within-named Alexander Robinson, David Robinson, Cynthia Robinson, and Mary Robinson, and leaving the same with a true copy of the within."

Order, May 17, 1842, vol. "C," page 54, appoints Buckner S. Morris guardian *ad litem* for the infant heirs, David, Cynthia, and Mary Robinson.

Answer of said David, Cynthia, and Mary Robinson, by B. S. Morris, guardian, etc., filed May 19, '47, requires proof and submitting their interests to the protection of the court.

Order, May 18, 1847, vol. "C," page 58, that bill be taken as confessed against Alexander Robinson by default and cause referred to Mark Skinner, master in chancery, to take proof.

Master's report filed October 26, 1847:

Reports that he has examined patent duly executed by the President of the U. States, John Tyler, by Robert Tyler, secretary, and that in and by the terms of said patent there was granted to
120 said Alexander Robinson and his children the property mentioned in petition; that the estate so granted is indefeasible in the grantees, but cannot be conveyed by them except by permission and approval of the President of the U. S.

Decree October 27, 1847, it appearing to the court that said Joseph Robinson, Alexander Robinson, David, Mary, and Cynthia Robinson are seized in fee-simple and are possessed as tenants in common in equal, undivided $\frac{1}{5}$ parts in and to (premises heretofore set forth); orders and decrees that said Joseph Robinson have judgment of partition, and orders that Thomas C. Moore, Carleton Holland, and William H. Davis be appointed commissioners to make said partition.

Commissioners' report not in papers.

Decree (sets forth commissioners' report in full), and confirms the same; orders and decrees that partition of the said land be made as set forth in the said report, viz., that there be, and is hereby, set apart to Alexander Robinson 256 acres from the south side of the south section of said lands, being 32 chains wide from N. to S. and extending across said sect. from E. to W. 80 chains wide; to David Robinson 192 acres from the south side of the north $\frac{1}{2}$ of said south section, being a strip of land 24 chains wide from N. to S. and extending across said section from E. to W. 80 chains; also a strip from the N. part of the south $\frac{1}{2}$ of said section, being 8 chains wide from N. to S. and extending across said section 80 chains, con-
121 taining 64 acres, and to the said other parties other property.

Orders and decrees that said parties execute partition deeds each to the others for their respective interests on or before the 1st day of September next, and that Buckner S. Morris, as commissioner appointed for that purpose, execute a partition deed or deeds for the manors herein in conformity with the provisions of this decree, and should the said parties in interest and the said B. S. Morris not execute said deed before Sept. 1st, 1848, then Alfred Cowly is appointed commissioner to execute said deed.

Mr. AHRENS: This abstract does not show the conveyance of the land in question by partition deed. The deed shown here in this abstract relates to property involving not this identical part in Robinson's reserve, not this identical property, but other property of said Robinson's reserve. Did you ever see the original record of the partition deed made after the decree of partition in this partition case?

A. Yes, sir.

Q. State what you know, if anything, about the property in question having been conveyed to Joseph Robinson in that partition deed.

Objected to.

The COURT: Was there a copy of that?

Mr. AHRENS: No; the only thing they had was this abstract which contains other property, shows this property described in the abstract was conveyed to other parties.

122 It is admitted a purported partition deed was made in accordance with the decree of partition by which the south sixteen chains of the north section and the north sixteen chains of the south section of Robinson's reservation were conveyed to Joseph Robinson by his father and by his brothers and sisters who were grantees under the patent.

Whereupon court adjourned until 10 a. m., March 26th, 1896.

10 A. M., MARCH 26TH, 1896.

Court met pursuant to adjournment.

AQUILA H. PICKERING, the complainant, called as a witness on his own behalf, being duly sworn, testified as follows:

Direct examination.

By Mr. AHRENS:

Q. What is your name?
A. Aquila H. Pickering.
Q. Are you the complainant in this cause?
A. I am.
Q. Where do you reside?
A. Chicago.
Q. How long have you lived in Chicago?
A. Near 32 years.
Q. You may state whether or not you ever had any title deeds to the real estate, to the land in question.
A. I had.

123 Q. What deeds did you have?

A. I had a deed from Joseph Robinson and wife to John F. Horton, and I had a deed from Leon Strauss, administrator *de bonis non*, to Moses W. Baer.

The COURT: Administrator *de bonis non* of whom?

A. Leon Strauss to Moses W. Baer. I had a deed from Moses W. Baer to Charles Kappmeier, Charles Kappmeier to Leon Strauss,

Leon Strauss to Morritz Gotthelf, Morritz Gotthelf to Joseph Gotthelf, from Joseph Gotthelf and wife to Henry H. Dyer, a quitclaim deed from Leon Strauss to Henry H. Dyer, and Henry H. Dyer and wife to Aquila H. Pickering.

Q. That is to yourself?

A. Yes, sir.

Q. When were these deeds delivered to you?

A. They were delivered to me at the office of Leon Strauss on the 10th day of November, 1866, together with the abstract of title.

Q. State what, if anything, you paid or gave to Henry Dyer for the deed from himself and wife to yourself.

A. The consideration in the deed was $1,600, although I exchanged him an acre of ground near Lincoln Park which was sold in less than six months for $10,000.

Q. State to the court what became of the deeds.

A. These deeds were given into my possession. I took them to my office, which was on South Water street, and in moving from South Water stre-t to the Union National Bank building afterwards those deeds were lost. Still, I think they were stolen from me.

124 Q. Was that before or after the fire of 1871?

A. Before the fire.

Q. What became——

A. Let me state a little farther, it is possible, I think likely, some of those deeds were not lost or stolen, but were consumed in the fire.

Q. State whether or not you have made any search for any of these deeds.

A. I have made a diligent search.

Q. What search did you make; where did you search?

A. Well, I searched all through my papers, over my books, every place where I kept anything.

Q. Every place where they would be likely to be?

A. Every place where they were likely to be and where they would not be likely to be. I searched diligently for them.

Q. State whether or not it is now in your power to produce any one of those original deeds.

A. It is not in my power to do it.

Q. You may state whether or not you had originally a certified copy of a deed from Robinson and wife to Horton, with the approval of the President endorsed upon it.

A. Yes; I did.

Q. From whom did you obtain that deed?

A. This certified copy?

Q. Yes; with the approval of the President upon it.

A. Jones & Sellers were the parties who got the certified copy.

Q. They procured it for you?

A. Yes, sir.

125 Q. What became of that?

A. I think my recollection is I left it in the hands of Jones

& Sellers, who were going to procure the President's approval of this land.

Q. What became of that certified copy with the approval of the President endorsed, which you say Jones delivered to you?

A. That was burned the time of the big fire in 1871.

Q. State whether or not at the time all those deeds about which we have been speaking were examined by you when they were delivered to you.

A. They were all examined by me.

Q. Do you remember what kind of deeds they were?

A. Yes; they were the deeds that were prepared by Culver, Page & Hoyne. They all read alike. The deeds were all the same; the same deed, same description exactly, with the exception of the names of the parties who conveyed; the deeds that were in use at that time; they were all just alike.

Q. That is, the form alike?

A. The form alike.

Q. You have read the deposition of Leon Strauss that has been filed in this case, have you?

A. Yes, sir.

Q. You have read the form as he gives it in those deeds?

A. Yes; I did.

Q. Now, you may state whether or not that form as given by him is in accordance with your recollection of the form.

Mr. MAHER: I object.

Q. You have read the description of the property in ques-
126 tion as it is set forth in the declaration in this cause?

A. Yes; I have.

Q. You may state what the description of the property was in those deeds as compared to the description in the declaration.

A. They were the same—identical, word for word.

Q. Now, what, if anything, did you do in relation to this land after you obtained these deeds?

A. I got these deeds in the fall.

Q. The fall of what year?

A. The fall of 1866. The next season I went out upon the land, tried to find it. I inquired of the neighbors there about it—of Mr. Cooney and Mrs. Cooney, who lived right near by.

Q. Well, who were they?

A. Well, Mrs. Cooney was a sister to Joseph Robinson; Mr. Cooney was her husband. She seemed to be very familiar with the land; knew where it was; gave me a good deal of information about it; told me where I could find it. I went upon the land as near as I can tell by her description, and others told me about it. I was not very well satisfied whether I got upon the land or not, and I went back to Mrs. Cooney and asked her if she would take charge of that land for me, look after it, and she agreed she would, and I agreed with her to let her have the fuel off the land, what she used, to pay her for looking after it, taking charge of it for me. Afterwards

I went and employed the county surveyor, Mr. Walcott, to go and survey it for me, and he made a plat of it.

127 Q. Look at this plat and state whether that is the plat he gave you.

A. Yes, sir; this is the identical plat—the one that he made and gave it to me.

Counsel for complainant offered in evidence the plat above referred to. The same is in the words and figures following, to wit:

(Here follows diagram marked p. 128.)

129 Q. Now, you may proceed.

A. Well, after Walcott gave me this plat, I took a gentleman with me and went out to look after the land further. We did that; went out in the morning. We went over it; we found the corners, as this map indicates, where he put the stakes and marked the trees and told us how to find it; we went there and found it. I had this man and myself. We got the stones about the corners, each corner as it was designated by *meets* and bounds, and looked it over; then went to Mr. Cooney's and told him what we done and searched all that day, further talking with Mr. Cooney. He agreed to keep possession of it, hold it for me, which I was to pay him and which I did pay him.

Q. Now, after that, did you visit the land again?

A. Yes, sir; several times.

Q. When was the last time before the commencement of this suit?

A. Well, the last time, just before the commencement of this cuit, I went out there with a gentleman who I was leasing it to and he agreed to build a little house upon it, and when we got there we found the land was fenced in with other lands.

Q. What was that date?

A. I guess that was in 1882, not long before the commencement of this suit. I think it was in 1883 the suit was commenced. We parl*ied* over it awhile before this suit was commenced; we went right to it and found this was the case; then I went to Mr. Bisbee and counseled with him about it, and he suggested to bring this suit.

130 Mr. AHRENS:

Q. How long did Mr. and Mrs. Cooney take charge of this property for you, as you have stated?

A. They have charge of it right up until this time.

Q. Up until what time?

A. Well, up until about the time we commenced suit. They had charge of it up until that time.

Mr. MAHER: I object unless he knows what they did.

The COURT: The objection is good.

Mr. AHRENS:

Q. You say you went out there several times. You may state

what, if anything, you saw had been done or was done at the time you went there by Mr. and Mrs. Cooney in relation to this property in question.

A. I saw nothing except where they took some wood—cut down some trees which they ought not to. I made some objection to it. They seemed to think it was all right. They wanted some for some poles—something there, and my agreement with them was they should use dead trees and not to cut off the timber. He told me how it was, and it was all satisfactory.

Q. State whether or not you paid some taxes upon the land in question.

Objected to.

A. I paid taxes right up until—I cannot tell just how.

131 Cross-examination.

By Mr. MAHER:

Q. You did not see the land at all before you obtained your deed for it?

A. Which land?

Q. The land in Robinson's reserve.

A. No; I didn't see it.

Q. Did you see it for some time after you obtained your deed?

A. I did not see it until the next spring. I had a gentleman who did see it for me; Dr. Starr his name was.

Q. Then you had it surveyed—that plat made?

A. Yes; I did.

Q. The only thing Cooney did upon the land was to cut some timber off for his own use, was it?

A. That was all I know of.

Q. That was timber you did not want him to cut off?

A. No; they cut some timber I did not want, and they used the wood during the whole time I had possession of it.

Q. At that time what was the condition of things in Robinson's reserve? When you went out there first was there any portion of it fenced in?

A. No, sir; not this piece.

Q. Well, either section, north or south?

A. I cannot say.

Q. Well, the country out there was a run for cattle at that time, wasn't it?

A. East side of the river—I cannot say whether some upon the north part, east side of the river, that was not fenced or not, but the timber was not fenced, my recollection is.

132 Q. This property is upon the east side of the river—this property in question here?

A. East side of the river; yes, sir; right up against the river.

Q. The property on the west side of the river was not timber land?

A. Right near the river was where Mr. and Mrs. Cooney lived—was timber around her place there.

Q. Do you know where Joe Robinson lived out there?

A. Well, he lived a little north from this place where Mrs. Cooney did.

Q. Do you know on which side of the river?

A. I do not believe I can tell which side of the river.

Q. How many times altogether were you out there, Mr. Pickering?

A. Oh, I was out there several times; I cannot tell.

The COURT:

Q. Did the river run through the reservation?

A. Run through the reservation. Mrs. Cooney lived close on one side, and this land is across the river, five or six steps coming up to the corner of the land, — my recollection.

Mr. MAHER:

Q. The last time you were out there you found this land fenced in with other lands?

A. Yes, sir.

Q. How much was fenced in at that time; do you know?

A. No; I cannot tell how much; quite a large tract.

The COURT:

Q. More than 40 acres?

A. Yes; more than 40 acres.

Mr. MAHER:

Q. Did you examine the record of the partition proceedings at the time you bought—before you bought?

133 A. I examined them, yes; in the abstract it showed; I examined that; had it examined by an attorney.

Q. Did you make an examination of the decree for partition before you bought?

The COURT: Between Robinson and his children.

A. I do not think I examined anything except the abstract at the time I bought.

Mr. MAHER:

Q. Do you remember whether you looked at the decree in the records of Cook county court at that time?

A. At the time when I first made the purchase?

Q. Yes.

A. I did not at that time. I did examine the decree in the courthouse, but not at the time I made the purchase.

Q. Did you state on the former trial of this cause you had looked at the decree of partition in the county court of common pleas?

A. I say I did look at it in court, but I do not think it was before I bought it.

Q. At what time do you think you looked at it there?

A. I looked at it afterwards.

Q. Do you think you looked at it before you applied for approval from the President for a certified copy of the Robinson deed?

A. I cannot say I did look at that particular point of it. I was in there with Mr. Jones, and I looked over the things put on record in regard to this land.

Q. Well, before you bought you saw the abstract showing
134 this proceeding, didn't you?

A. Yes, sir.

Redirect examination.

By Mr. AHRENS:

Q. Did you examine this decree with Mr. Jones at the time you were making preparations to have the deed approved by the President?

A. Yes, sir; that is when we examined it; everything we could find upon the books, everything in regard to this land.

Whereupon the complainant rested his case in chief.

Mr. MAHER: If the court please, I fail to see where Mr. Pickering gets title, if complainant now rests. I desire to say, if a deed has been offered it has been offered without my knowing it—a deed to Mr. Pickering from his grantor.

AQUILA H. PICKERING resumed the stand for further examination by Mr. Ahrens:

Q. State, as near as you can, the contents of the deed from Henry Dyer and wife to yourself.

Objected to.

Mr. AHRENS: I offer by consent a minute from the abstract of title made by Handy, Simmons & Co.—a memoranda of deed from Henry H. Dyer and Sarah Jane, l is wife, to Aquila H. Pickering, dated
135 November 10th, 1866; recorded November 23rd, 1866, Book 365, page 404; consideration, $1,600, conveying the premises in question—and the same was marked "Complainant's Exhibit 10."

Mr. MAHER: If the complainants now rest, I desire to make a motion to dismiss for failure of complainant to make out a case; the complainant has failed to establish a case or make out any claim of title, and I ask the court to find the issues for the defendant.

Motion overruled; to which ruling of the court counsel for defendant then and there duly excepted.

Mr. MAHER: We hand the court a written proposition of law as follows: "The defendant- asks the court to hold that under the law the plaintiff has failed to establish his case, and to find the issues for the defendants." We ask the court to hold this as the law.

Which proposition the court then and there refused, and to which refusal counsel for defendants then and there duly excepted.

Mr. AHRENS: I have a motion to make to exclude any evidence offered by the defendants. The motion is that the defendant- be

disallowed to offer any evidence, and that, in accordance with the mandate of the supreme court, the court enter a finding and judgment for plaintiff. Mr. Bisbee wants this point made. Now, if this were a chancery case, then I think the point would be good. This is not a chancery case, and in the 157th Illinois, 615, there is a case, it seems, testimony was heard as it was here, and the
136 appellate court reversed the decision of the lower court and ordered a decree to be entered, and the defendant then asked leave to offer evidence, which was denied, and it was urged it was error in the appellate court.

The COURT: The motion will be overruled.

To which ruling of the court counsel for complainant then and there duly excepted.

And thereupon the counsel for defendant called the defendant, JOHN A. LOMAX, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. MAHER:

Q. Where do you live?
A. In Chicago.
Q. How long have you been a resident of Chicago?
A. In the neighborhood of forty years.
Q. Do you know Robinson's reservation, near the Des Plains river, in the town of Leyden?
A. I do.
Q. Did you have title deeds or deeds purporting to convey title to any portion of that reservation?
A. I did.
Q. Will you state what deeds you had in your possession?
A. I bought from J. V. Le Moyne.
Q. Have a deed from him?
A. I had a deed from him.
Q. Who was his grantor, if you know?
A. John V. Le Moyne's grantor was, I think, Kerfoot.

137 The COURT:

Q. What Kerfoot was that?
A. Kerfoot the real-estate man—C. A. and W. D.
Q. Who was the grantor of the Kerfoots?
A. Charles Wicker.
Q. Who was the grantor of Wicker, if you know?
A. I cannot remember just this moment—Alexander W. McClure.
Q. Who conveyed to McClure?
A. Joseph Robinson.
Q. Did you have any of the original deeds in your possession at any time?
A. I had all the deeds in my possession at one time.
Q. Do you know what became of them?
A. Well, I have one now, I think.

Q. One of the originals?
A. One of the originals.
Q. Do you know which one you have?
A. That from Kerfoot, I believe.
Q. Do you know what became of them?
A. I do not know what became of them—lost in some shape, but I cannot tell how.
Q. The last time you remember having them, what had been done with them?
A. They were in McElherne's office.
Q. Who was McElkerne?
A. A lawyer; he was my attorney at that time; P. T. McElherne.
Q. Have you searched for those deeds?
A. I have given a very thorough search for those deeds. I cannot find them nowhere.
Q. Where did you search?
A. Through all my papers at home, in the safe; every
138 place where I supposed they would be. I have come to the conclusion I never had them back from Mr. McElherne's office.
Q. Is it within your power now to produce the original deeds except the one you have spoken of?
A. It is not.

Mr. MAHER: I will first offer in evidence a certified copy from Washington, with its accompanying certificates, of a deed from Joseph Robinson and Ellen Maria Robinson, his wife, to Alexander W. McClure, said deed being dated the 22nd day of November, 1870, and conveyed 128 acres, more or less, the property so conveyed being described by meets and bounds as follows: That part of the tract known as Robinson's reservation, bounded as follows, to wit: Commencing at the southeast corner of the north section of said tract, thence westerly along the south line of said section 32 chains and ninety links to land conveyed by said first party to Patrick Powers by deed dated July 5th, 1864; thence north along the east line of the said last-mentioned land sixteen chains; thence westerly, in a line parallel with said south line of said section, 32 chains and 90 links to the east line of said north section; thence south sixteen chains to place of deginning, containing fifty-two and $\frac{64}{100}$ acres, more or less; also another parcel of land, being a strip of land sixteen chains in width from north to south and extending entirely across the north side of the south section of said reservation, containing 76.18 acres, more or less.

The COURT: This deed covers the forty acres in question?
139 Mr. MAHER: Yes; it covers all of the forty acres in question. Attached to the deed is the certificate of Hiram Price, Commissioner of Indian Affairs at Washington, District of Columbia, certifying the deed and its accompanying certificates are true and literal copies from the records in the office of the Commissioner of Indian Affairs; also a certificate of Henry M. Teller, Secretary for the Department of the Interior, United States of America, cer-

tifying that said Hiram Price was then the Commissioner of Indian Affairs; also attached to and made a part of the deed is, first, the certificate of Ruthven W. Pike, notary, acknowledging the signatures of Joseph Robinson and Ellen Maria Robinson, his wife; also the certificate of John G. Gindels, the then county clerk of Cook county, certifying that the said Ruthven W. Pike was at the time of taking such acknowledgments a notary public; also the affidavit of Robert A. Kenzie, setting forth that he has been a resident of said Cook county for many years; that he is now major paymaster in the United States Army and on duty in Chicago, Illinois; that he has known Joseph Robinson, son of Alexander Robinson, of the Pottawatomie tribe of Indians, for the past thirty years, and has also known Ellen Maria Robinson, wife of said Joseph Robinson, for the same length of time; that he is entirely disinterested in the matter hereinafter referred to and is not acting, and has not acted, as agent for said Joseph Robinson or Ellen Maria Robinson, grantor, or for Alexander W. McClure, grantee, named in a certain deed herein-
140 after mentioned, in any manner whatsoever; that the said Joseph Robinson has this date exhibited to this deponent a certain warranty deed from himself and the said Ellen Maria, his wife, as grantors, to said Alexander W. McClure, as grantee, dated November 22nd, 1870, and describing and conveying two certain tracts of land, both in Robinson's reservation, in the said county of Cook and State of Illinois, one in the north section of said reservation, conveying 52.64 acres; the other in the south section thereof, containing about 76.18 acres—altogether 128.82 acres; that he is informed by said Joseph Robinson, and verily believes, that the said sum of $6,441 named in the said deed as the consideration thereof is to be paid to said Robinson by said McClure in money as follows: One half part thereof whenever said Robinson puts said McClure in complete and legal possession of said land, and the other half in one year thereafter; that he verily believes there can be no injustice or injury to said grantors in consequence of said conveyance of said land, and that said grantors are intelligent persons and capable of managing their own property, as he verily believes.

(Signed) R. A. KENZIE.

Subscribed and sworn to before me this 26th day of January, A. D. 1871.

RUTHVEN W. PIKE,

[SEAL.] *Notary Public.*

141 Certificate that said Ruthven W. Pike was on the date of the taking of the affidavit of said R. A. Kenzie duly commissioned, sworn, and acting as notary public in and for Cook county, in the State of Illinois; also attached to and made a part of said deed a diagram of Robinson's reservation, of Cook county, Illinois, which sets forth the land in question; also attached to and made a part of said deed the following:

"DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *February 21st*, 1871.

The within deed to Alexander W. McClure from Joseph Robinson and Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the fourth article of the treaty with the Chippewa, Ottawa, and Pottawatomie Indians, concluded at Prairie du Chien July 29th, 1829, is respectfully submitted to the honorable Secretary of the Interior with the recommendation that it be presented to the President for his approval.

(Signed) E. S. PARKER,
Commissioner.

Also the following:

"DEPARTMENT OF THE INTERIOR, *February 24th*, 1871.

The within deed is respectfully submitted to the President for his approval.

(Signed) C. DELANO, *Secretary.*"

142 Also the following approval of the President:

EXECUTIVE MANSION,
WASHINGTON, D. C., *February 24th*, 1871.

The within deed is hereby approved.

(Signed) U. S. GRANT."

I now offer this deed in evidence and ask that it be marked "Defendant's Exhibit 1."

The deed is as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, D. C., *May* 29, 1883.

I, Hiram Price, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of a deed and accompanying certificates, etc., dated November 22, 1870, from Joseph Robinson and Ellen Maria Robinson, his wife, to Alexander W. McClure for certain tracts of land in Cook county, Illinois, as therein described, with the approval of the President of the
143 United States indorsed thereon, under date of February 24, 1871, as the same appear of record (vol. Deeds 6, page 15) in this office.

H. PRICE,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 29th*, 1883.

I, Henry M. Teller, Secretary for the Department of the Interior of the United States of America, do hereby certify that Hiram Price, whose name appears signed to the foregoing certificate, is now, and was at the time of signing the same, Commissioner of Indian Affairs, and that full credit and faith are due to his official

acts as such; and that the papers hereto attached are true and literal copies of a deed and accompanying certificates, etc., dated November 22, 1870, from Joseph Robinson and wife to Alexander W. McClure, for certain tracts of land in Cook county, Illinois, as herein described with the approval of the President of the United States endorsed thereon, under date of February 24, 1871, as the same appears of record (Deeds, vol. 6, page 15), in this department.

In testimony whereof I have hereunto set my hand, and have caused the seal of said department to be affixed, on the day and year above written.

H. M. TELLER, *Secretary.*

This indenture, made this twenty-second day of November, in the year of our Lord one thousand eight hundred and seventy, between Joseph Robinson and Ellen Maria Robinson, his wife, both of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Alexander W. McClure, of the same city, county and State, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of six thousand four hundred and forty-one dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath granted, bargained, sold, remised, released, conveyed, aliened and confirmed, and by these presents doth grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following-described
144 lots, pieces or parcels of land, situate in the county of Cook and State of Illinois, and known and described as follows, to wit, that part of the tract known as Robinson's reservation, bounded as follows, to wit: Commencing at the southeast corner of the north section of said tract; thence westerly along the south line of said section, thirty-two (32) chains and ninety (90) links, to land conveyed by said first party to Patrick Powers, by deed, dated July 5, A. D. 1864; thence north along the east line of the said last-mentioned land, sixteen (16) chains; thence easterly in a line parallel with said south line of said section, thirty-two (32) chains and ninety (90) links, to the east line of said north section; thence south sixteen (16) chains, to the place of beginning, containing fifty-two and sixty-four one-hundredths (52.64) acres, more or less.

Also another parcel of land, being a strip of land sixteen (16) chains in width from north to south, and extending entirely across the north side of the south section of said reservation, the same set apart from said south section to said first party, by decree of partition of said tract in the Cook county court, May 29th, A. D. 1848, recorded in the records of Cook county court, Book "D," page 186.

Excepting three certain parcels thereof, as follows: One tract, containing about ten (10) acres, conveyed by said first party to one William Draper, by deed dated February 19, 1850, recorded in the recorder's office of said Cook county, Book 39 Deeds, page 477; also

one tract containing about twenty-one and eighty-two one-hundredths (21 and $\frac{82}{100}$) acres, conveyed by said first party to Patrick Powers, by deed dated July 5, 1864, recorded in said recorder's office, Book 300 Deeds, page 497; also one tract, containing about twenty (20) acres, this day conveyed by said first party to Alexander W. McClure, which said tract, after deducting the amount of the above three excepted parcels, contains about seventy-six and eighteen one-hundredths (76 and $\frac{18}{100}$) acres, more or less.

Together with all and singular the hereditaments and appurtenances thereuto belonging or in anywise appertaining, and
145 the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part either in law or equity of in and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Joseph Robinson, party of the first part, for his heirs, executors and administrators, doth covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee-simple and hath good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind and nature soever; and the above-bargained premises, in the quiet and peaceful possession of the said party of the second part, his heirs and assigns against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

JOSEPH ROBINSON.

And the said Joseph Robinson and Ellen Maria Robinson, his wife, party of the first part, hereby expressly waive and releases any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois, provided for the exemption of homesteads from sale on executions or otherwise, and especially under the act entitled, "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois, A. D. 1851, and an act entitled "An act to amend an act entitled, An act to exempt homesteads from sale on executions," passed by said assembly A. D. 1857, and approved February 17, A. D. 1857.

146 In witness whereof, the said party of the first part hath hereunto set their hands and seals the day and year first above written. The word "south" changed to "north" before signing

the fourth word from the left-hand margin in the sixteenth line from the top.

JOSEPH ROBINSON. [SEAL.]
ELLEN MARIA ROBINSON. [SEAL.]

Signed, sealed and delivered in presence of—
JOSEPH ROBINSON.
R. W. PIKE.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Ruthven W. Pike, a notary public, in and for said town of South Chicago, in said county and State aforesaid, do hereby certify that Joseph Robinson and Ellen Maria Robinson, who are personally known to me as the same persons whose names are subscribed to the within warranty deed, as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title and interest in and to the premises described in said warranty deed and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all homestead exemption laws so called.

And the said Ellen Maria Robinson, wife of the said Joseph Robinson, having been by me examined separate and apart, and out of the hearing of her said husband, and the contents and meanings of the said warranty deed having been by me made known to her and fully explained to her, together with all her rights and privileges under the homestead exemption laws, so called, of the State of Illinois, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, — interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all homestead
147 exemption laws, so called, without the compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and notarial seal, this twenty-third day of November, in the year of our Lord, one thousand eight hundred and seventy.

[SEAL.] RUTHVEN W. PIKE,
Notary Public.

STATE OF ILLINOIS, } ss:
Cook County, }

I, John G. Gindele, clerk of the county court of the said county, the same being a court of record, do hereby certify that Ruthven W. Pike, Esq., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was, at the time of taking such proof or acknowledgment, a notary public in and for the town of South Chicago, in Cook county, duly commissioned, sworn and acting as such, and authorized to take the same; that I

am well acquainted with his handwriting, and I verily believe that the signature to the said proof or acknowledgment is genuine, and further that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois, and that his commission is on record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of Chicago, in the said county, this 21st day of January, 1871.

[Revenue stamp.]

JOHN G. GINDELE, *Clerk.*

STATE OF ILLINOIS, } ss:
Cook County, }

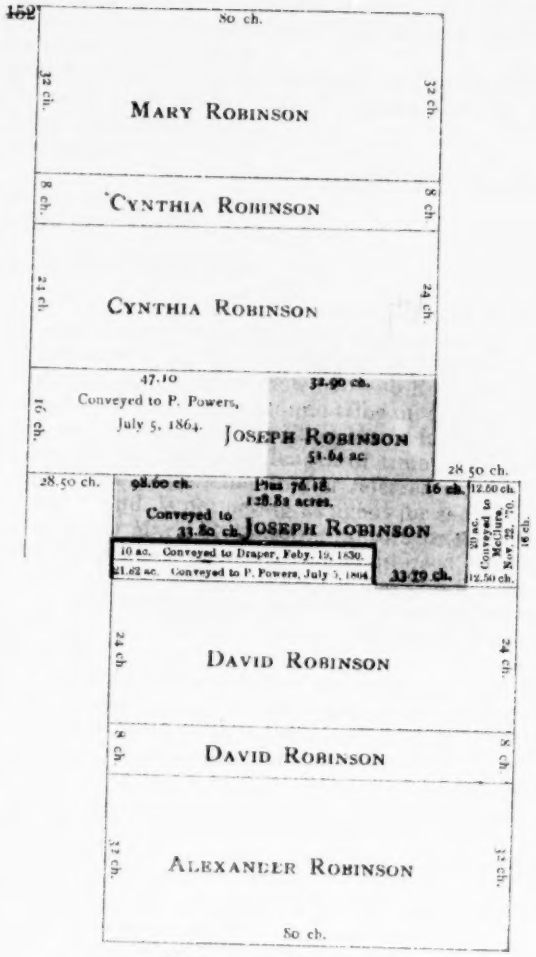
TOWN OF SOUTH CHICAGO, ss:

Robert A. Kinzie, being first duly sworn, on oath says that he has been a resident of said Cook county for many years; that he is now major and paymaster in the United States Army, and on duty at Chicago, Illinois; that he has known Joseph Robinson, son of Alexander Robinson, of the Pottawatomie tribe of Indians, for the past thirty years, and has also known Ellen Maria Robinson, wife of said Joseph Robinson, for the same length of time; that he is entirely disinterested in the matters hereinafter referred to, and that he has not acted, and is not acting as agent for said Joseph Robin-
148 son or Ellen Maria Robinson, grantors, or for Alexander W. McClure, grantee, named in a certain deed hereinafter mentioned in any manner whatsoever—that the said Joseph Robinson has this day exhibited to this deponent a certain warranty deed from himself and the said Ellen Maria, his wife as grantors, to said Alexander W. McClure, as grantee, bearing date November 22, A. D. 1870, and describing and conveying two certain tracts of land both in "Robinson's reservation," in said county of Cook, and State of Illinois, one in the north section of said reservation containing fifty-two and sixty-four one-hundredths acres, the other in the south section there containing about seventy-six and $\frac{18}{100}$ acres altogether one hundred and twenty-eight and $\frac{82}{100}$ acres and that he is informed by said Joseph Robinson and verily believes that the said sum of six thousand four hundred and forty-one (6,441) dollars named in said deed as the consideration thereof is to be paid to said Robinson by said McClure in money, as follows: One-half part thereof whenever said Robinson puts said McClure in complete and legal possession of said land and the other half in one year thereafter, and that he verily believes there can be no injustice or injury to said grantor in consequence of said conveyance of said land and that said grantors are intelligent persons and capable of managing their own property as he verily believes.

R. A. KINZIE.

Subscribed and sworn to before me this 26th day of January, A. D. 1871.

[SEAL.] RUTHVEN W. PIKE,
Notary Public.



Red lines are intended to be shading

No. 396.
Lomax
v.
Pickering
$150

STATE OF ILLINOIS, } ss:
Cook County, }

I, John G. Gindele, clerk of the county court of said county, same being court of record, do hereby certify that Ruthven W. Pike, Esq., whose name is subscribed to the jurat of the annexed affidavit was, at the time of administering the oath therein, a notary public in and for the town of South Chicago, in Cook county, duly
149 commissioned, sworn and acting as such and authorized to administer oaths; that I am well acquainted with his handwriting, and I verily believe that the signature to said jurat is genuine; and further, that his commission is on record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of Chicago, in said county, the 26th day of January, 1871.

[Revenue Stamp.]

JOHN G. GINDELE, *Clerk.*

(Here follows diagram marked p. 150.)

151 Diagram of "Robinson's reservation" in Cook county, Illinois. The names written in red ink are those to the decree of partition of said tracts in the Cook county court, May 29, 1848, it being divided among them in five equal portions.

The shaded part of Joseph Robinson's portion is intended to be conveyed by the accompanying deed. Those parts of his portion not shaded have been conveyed by him in other deeds as noted on this diagram.

I have examined these statements and maps throughout and know them to be all correct.

JOSEPH ROBINSON.

Chicago, January 26, 1871.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *February* 21, 1871.

The within deed to Alexander W. McClure from Joseph Robinson and Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the 4th article of the treaty with the Chippewa, Ottawa, and Pottawatomie Indians, concluded at Prairie du Chien, July 29, 1829, is respectfully submitted to the honorable Secretary of the Interior with the recommendation that it be presented to the President for his approval.

E. S. PARKER,
Commissioner.

DEPARTMENT OF THE INTERIOR, *February* 24, 1871.

The within is respectfully submitted to the President for his approval.

C. DELANO, *Secretary.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *February* 24, '71.

The within deed is hereby approved.

U. S. GRANT.

152 Q. When you bought this property from John V. Le Moyne what, if anything, did you do towards taking possession of it?

A. I took possession immediately after I bought it.

Q. What condition was the property in when you bought it—was it fenced in or otherwise?

A. It was fenced in.

The COURT: What is the date of your deed from Le Moyne?

A. It was in 1876, in October, I think. I am not very positive about the date.

Mr. MAHER: The deed is dated October 18th, 1876. Have you been in possession of that land ever since you bought it, through yourself or your tenants?

A. I have.

Q. Do you know William Kolze?

A. I do.

Q. What, if anything, did Kolze have to do with that particular piece of property?

A. I rented it to him.

Cross-examination.

By Mr. AHRENS:

Q. Was a fence around this particular piece—was there a fence around more than the land including this?

A. Around more of the lands?

Q. Was there a continuous fence?

A. Well, no.

Q. Describe the fence.

A. I cannot describe the whole thing, because I did not pay attention to the fence. I cannot describe it—just how it was.

153 Q. How was the fence?

A. The fence was partly on the road leading east and west and part upon the north part of that section.

Q. How far was the east fence from the east line of this land?

A. I cannot just describe it now.

Q. Was there a fence upon the east side?

A. Yes; there was a fence upon the east side.

Q. Can you tell about how far?

A. No; I cannot.

Q. How far from the north line of this property was the north side of the fence you saw; was there a fence upon the north side?

A. There is a little fraction of section 15 which I own there. This land runs up to that little fraction of section 15 in the township of Leyden, and it ran up to that part.

Q. Do you know who put the fence there?

A. I do not. I think Albert Gray did, but I am not sure.
Q. Who was he?
A. He had possession of it when I bought it of Le Moyne.
Q. Was there a fence upon the west side of this land?
A. The river comes to the west line of this land.
Q. The west side of this land does not come up quite to the river?
A. It came up to the river where I bought—right into the river.
Q. You bought more than forty acres?
A. Yes, sir.
Q. These forty acres did not come up to the river?
A. No.
154 Q. There was not any fence upon the west side of this land and between the river, between the west line of this property and the river?
A. I do not believe there was. I do not recollect there was.
Q. Was there a fence upon the south side?
A. There was a fence upon the south side up to the road.
Q. How far was the south line of this property from the road?
A. Well, a little strip belongs to Kolze now, that Kolze owns. Then the east side of it I own about 96 acres, or another part of it which didn't belong to the Robinson reserve at all.
Q. Now, show the court, as near as you can, about where that fence was. Here is the southeast corner of the north section.

The COURT (referring to map): This is the forty?
Mr. AHRENS: Yes, sir.
The WITNESS: Kolze owned a piece betwixt there (indicating) and the road.

The witness explained the location of the forty acres with reference to the river from a map before the court.

Mr. MAHER:

Q. You paid the taxes upon this property, haven't you?
A. Yes, sir; some. I paid taxes since I owned it.

Mr. MAHER: I have a witness here in court, Mr. Wilmans, of the firm of Wilmans & Pasdeloup, makers of abstracts of titles prior to the great fire. I desire to have him called for the purpose of making competent a certified copy of the deed from letter-press copies made by his firm and now in the office of the recorder of deeds for Cook county. I have also here the recorder as a witness to testify in that connection.
155 Mr. AHRENS: It is not necessary to call them, as I have no objection to your introducing certified copies of deeds in place of the original.
Mr. MAHER: That being agreed to, I now offer in evidence the certified copy taken from a letter-press copy of a warranty deed in the examination of conveyances in Letter-press Book 12, page 638, of continuations of abstracts, the deed now offered being a copy

of the same deed last read, and offered now solely for the purpose of showing the date of its record in the recorder's office of Cook county, Illinois. Said deed is as follows: Joseph Robinson and Ellen Maria, his wife, of Chicago, Illinois, to Alexander W. McClure; warranty deed dated November 22nd, 1870; recorded, with the approval of the President on it, March 11, 1871, in Book 585, page 281, in said recorder's office, the consideration therein mentioned being the sum of $6,441, and accompanied by the certificate of Samuel B. Chase, recorder of deeds of Cook county, Illinois, and the same is marked as "Defendant's Exhibit 2."

JAMES MAHER.

Joseph Robinson and Ellen Maria, his wife, of Chicago, Ills., to Alexander McClure.	Warranty deed, dated November 22, 1870, and recorded March 11, 1871, in Book 585, page 288. Consid'n, $6,441.00.

Grant-, barg-in-, sell-, &c., all the following-described lots, pieces, or parcels of land situate in county of Cook, Ills., and known & described as follows, to wit: That part of the tract known as Robinson's reservation, bounded as follows, to wit:

156 Commencing at the S. E. corner of the north section of said tract, thence westerly along the south line of said section 32 chains & 90 links to land conveyed by said first party to Patrick Powers by deed dated July 5, 1864; thence north along the east line of the said last-mentioned land 16 chains; thence easterly on a line parallel with said south line of said section 32 chains & 90 links to the east line of said north section; thence south 16 chains to the place of beginning, containing 52.64 acres, more or less.

Also another parcel of land, being a strip of land 16 chains in width from north to south and extending entirely across the north side of the south section of said reservation, the same set apart from said south section to said first party by decree of partition of said tract in the Cook county court May 29th, A. D. 1848, recorded in the records of the Cook county court, Book D, page 186, excepting three certain parcels thereof, as follows: one tract containing about ten acres, conveyed by said first party to one William Draper by deed dated February 19th, 1850, recorded, &c., in Book 39 of Deeds, page 477.

Also one tract containing about 21.82 acres conveyed by said first party to Patrick Powers by deed dated July 5th, 1864, recorded, &c., in Book 300 of Deeds, page 497; also one tract containing about 20 acres this day conveyed by said first party to Alexander W. McClure; which said tract, after deducting the amount of the above therein accepted parcels, contains about 76.18 acres, more or less.

157 Homestead rights waived; acknowledged November 23, 1870, before a notary public in & for the town of South Chicago, Cook Co., Illinois.

Certificate of magistracy & conformity by clerk of county court of Cook county, dated January 21, 1871, appended.

Submitted to the Secretary of the Interior, with the recommendation that it be presented to the President for his approval, February 21, 1871, by S. E. Parker, Commissioner.

Submitted to the President for his approval February 24, 1871, by C. Delano, Secretary of the Interior.

Approved February 24, 1871.

($6.50 stamp.)

STATE OF ILLINOIS, } ss:
Cook County, }

I, Samuel B. Chase, recorder of deeds and official abstract maker in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true copy of a letter-press copy of a warranty deed in an examination of conveyances in Letter-press Book 12, page 638, of continuation of abstracts, dated April 4th, 1871, in the records of the recorder's office.

Witness my hand and official seal this 20th day of March, A. D. 1896.

SAMUEL B. CHASE, *Recorder.* [SEAL.]

158 I next offer in evidence minutes of a deed made by Handy & Company, abstractors of titles of Cook county, Illinois; in which deed Alexander W. McClure and wife are grantors and Charles G. Wicker is grantee, the same being a special warranty deed dated June 17th, 1871, and recorded June 26th, 1871, containing the premises last described, and ask that the same be marked "Defendant's Exhibit 3."

March 11th, 1871.

86858.

859, 585, 288; Joseph Robinson & wf., Alexander W. McClure; W. D.; Nov. 22nd, '70; 6441; $6.50: That part of the tract known as Robinson's reservation, com'g at the S. E. cor. *north* (?) sec. of s'd tract, th'ce w'ly along the S. line of s'd sec. 32.90 chs. to land conveyed to Patrick Powers by deed of July 5, '64; th'ce N. along E. line of s'd land 16 chs.; th'ce e'ly, p'll with S. line of s'd sec., 32.90 chs. to E. line of s'd N. sec.; th'ce S. 16 chs. to beg.; 52.64 ac.

Also a strip of 16 chs. wide extending across the N. side of south sec. of s'd reservation, excepting 1 tract cont'g 10 ac. conveyed to Wm. Draper Feb. 19, 1850, by deed rec'd in 39, p. 477; also about 21.82 ac. conveyed to Patrick Powers by deed of July 5, '64, & rec'd in 300, 497; also 20 ac. conveyed to Alex. W. McClure.

April 1st, 1871.

89576.

159 577, 585, 318; Joseph Robinson & wf., Alexander W. McClure; W. D.; Nov. 22, '70; 1,600; $2: Com'g at N. E. corner of S. sec. of Robinson's reservation 40 12, th'ce S.

along E. line of s'd S. sec. 16 chs.; th'ce W. 12½ chs.; th'ce N. 16 chs.; th'ce E. 12½ chs. to beg., cont'g 20 ac.

June 26th, 1871.

102,429. June 25, '71.

430, 648, 423; Henry H. Gage, Charles G. Wicker; O. C.; June 20, '75; 50: Sublot 1 of lot 1, 12.64 ac., in S. E. cor. N. sec. Robinson's reserve, 40 12.

431, 663, 135; Asahel Gage & wf., Charles G. Wicker; O. C.; June 20, '71; 75; 50: E. 12.64 ac. in S. E. cor. lot 1, bl'k 1, N. sec. Robinson's reserve, 40 12.

432, 672, 94; William K. Wells & wf., Charles G. Wicker; O. C.; June 23, '71: 100; 50: S. lots 3, 9, & 12, lot 3, S. sec. Robinson's reserve, 40 12.

433, 559, 253; Alexander W. McClure & wf., Charles G. Wicker; S. W. D.; June 17; 3,000; $3: Com'g at S. E. cor. of N. sec. of Robinson's reserve, 40 12, thence w'ly along S. line 32.90 chs.; th'ce N. 16 chs.; th'ce e'ly, p'll to s'd S. line of sec., 32.90 chs. to E. line; — S. 16 chs. to beg.—52.64 ac.; also N. 16 chs. of S. sec. s'd reserve.

Excepting 10 ac. conveyed by Jos. Robinson to Wm. Draper by deed dated Feb. 19, '50; rec'd in B. 39, p. 477.

And 21.82 ac. conveyed by Joseph Robinson to Patrick Powers by deed of July 5, '64; rec'd in B. 300, p. 497.

160 STATE OF ILLINOIS, } ss:
County of Cook, }

Henry H. Handy, being first duly sworn, on oath states that the memoranda of conveyances hereto attached are true copies from books of original entry formerly belonging to Jones & Sellers; that the minutes and extracts contained in said books of original entry were made by said Jones & Sellers from the records in the recorder's office of Cook county, Illinois, and from original instruments filed for record in said recorder's office, and were made in the ordinary course of business prior to the destruction of the records of Cook county, Illinois, which occurred on or about October 8 and 9, 1871; that said books of original entry containing said minutes and extracts were at the said date of the destruction of said records in the possession of persons who were then engaged in the business of making abstracts of title for others for hire, and that the said original entry books containing the minutes and extracts from which the said copies are made are now in the possession of the Title Guarantee and Trust Company, of the abstract department of which company affiant is the manager.

HENRY H. HANDY.

Subscribed and sworn to before me this fourteenth day of March, A. D. 1896.

[SEAL.] GEO. W. SCHUMAKER,
Notary Public, Cook County, Illinois.

161 I next offer in evidence a deed dated the second day of May, 1872, from Charles G. Wicker and Elizabeth J. Wicker, his wife, to William D. Kerfoot and Charles A. Kerfoot, conveying the same premises and recorded on the 8th day of May, 1872, in Book 45 of Records, page 97, in the recorder's office of Cook county, and ask that the same be marked as "Exhibit 4:"

U. S. revenue stamp to the amount of $5.00 on this deed.

This indenture, made the second day of May in the year of our Lord one thousand eight hundred and seventy-two, between Charles G. Wicker and Elizabeth J. Wicker his wife of the city of Chicago, county of Cook and State of Illinois parties of the first part and William D. Kerfoot and Charles A. Kerfoot of the same place parties of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sum of five thousand ($5,000) dollars lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, do alien, remise, release, convey and confirm unto the said parties of the second part, and their heirs and assigns forever, all the premises situate in the county of Cook and State of Illinois, known and described as follows to wit:

Being parts of the tract of land known as Robinson's reservation in township forty (40) north of range twelve (12) east of the third principal meridian, the first parcel being bounded by commencing at the southeast corner of the north section of said tract thence
162 westerly along the south line of said north section thirty-two chains & ninety links (32 chs. 90 links) to land conveyed by Joseph Robinson to Patrick Powers by deed dated July 5, A. D. 1864 thence north along the east line of said last-mentioned land sixteen chains (16 ch.) thence easterly on a line parallel to the south line of said section to the east line of the said north section thence south sixteen chains (16 ch.) to the place of beginning containing 52.64 acres more or less and the second parcel hereby conveyed being described as a strip of land sixteen (16) chains in width from north to south and extending entirely across the north side of the south section of said reservation excepting however from said last-named strip two parcels thereof as follows: One tract of about ten (10) acres conveyed by Joseph Robinson to William Draper by deed dated February 19th 1850 recorded in the recorder's office of Cook county in Book 39 of Deeds page 477; also another tract of about 21.82 acres conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th 1864 and recorded in the recorder's office of Cook county in Book 300 of Deeds page 497, the second parcel hereby conveyed containing about 96 acres more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right title interest, dower, property, possession claim and demand whatsoever,

as well *as* in law as in equity of the said parties, of the first
163 part, of, in or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part their heirs and assigns forever.

And the said Charles G. Wicker for himself his heirs, executors and administrators, does hereby covenant promise and agree to and with the said parties of the second part, their heirs and assigns, that he has not made, done, committed or suffered, any act or acts, thing or things whatsoever whereby, or by means whereof, the above mentioned and described premises or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner whatsoever.

And the said Charles G. Wicker and Elizabeth J. Wicker his wife, parties of the first —, hereby expressly waive and release any and all right benefit, privilege advantage or exemption under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois A. D. 1857 and approved February 11. A. D. 1851, and an act entitled "An act to amend an act entitled 'An act to exempt homesteads from sale on execution,'" passed by said assembly A. D. 1857 and approved February 17 A. D. 1857.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

164 CHARLES G. WICKER. [SEAL.]
ELIZABETH J. WICKER. [SEAL.]

STATE OF ILLINOIS, }
Cook County, City of Chicago, } *ss:*

I, Charles O. Henshorn, a notary public in and for and a resident of said city, in said county, in the State aforesaid, do hereby certify that Charles G. Wicker and Elizabeth J. Wicker, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing warranty deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth; and the said Elizabeth J. Wicker, wife of the said Charles G. Wicker, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this
[NOTARIAL SEAL.] fourth day of May, in the year *A. D. 18*— of our Lord one thousand eight hundred and seventy-two.

165 CHARLES O. HENDERSON,
Notary Public.

No. 29535. Filed for record this 8th day of May, A. D. 1872.
NORMAN T. GASSETTE, *Recorder.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Samuel B. Chase, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the eighth day of May, A. D. 1872, as document No. 29535, and recorded in Book 45 of Records at page 97.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this thirteenth day of March, A. D. 1896.
[SEAL.] SAM'L B. CHASE, *Recorder.*

166 I next offer in evidence a certified copy from the recorder's office of Cook county, Illinois, of a special warranty deed dated the 22nd day of May, 1872, from William D. Kerfoot and Susan B. Kerfoot, his wife; Charles A. Kerfoot and Margaret K. Kerfoot, his wife, to John V. Lemoyne, conveying the same premises, recorded on the 19th day of October, 1876, as document No. 107,593, in Book 636 of Records, page 636, and ask that the same be marked as "Defendant's Exhibit 5:"

Kerfoot to Le Moyne.

U. S. rev. stamp, $550. This indenture made this twenty-second day of May in the year of our Lord one thousand eight hundred and seventy-two between William D. Kerfoot and Susan B. Kerfoot his wife Charles A. Kerfoot and Margaret K. Kerfoot his wife of Chicago, Cook county State of Illinois parties of the first part and John V. Le Moyne of the same place party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of five thousand and five hundred ($5,500) dollars lawful money of the United States of America to them in hand paid by the said party of the second part at or before the unsealing and delivery of these presents do alien remise release convey and confirm unto the said party of the second part, and his heirs and assigns forever, all the premises situate in the county of Cook and State of Illinois known and described as follows to wit:

167 Being parts of the tract of land known as Robinson's reservation in township forty (40) north range twelve (12) east of third (3rd) principal meridian. The first parcel being bounded by commencing at the southeast corner of the north section of said tract thence westerly along the south line of said north section 32

chains and 90 links to land conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th A. D. 1864; thence north along the east line of said last-mentioned land 16 chains; thence easterly on a line parallel to the south line of said section to the east line of said north section; thence south 16 chains to the place of beginning containing 52.64 acres more or less; and the second parcel hereby conveyed being described as a strip of land 16 chains in width from north to south and extending entirely across the north side of the south section of said reservation excepting however from said last-named strip two parcels thereof as follows: One tract of about 10 acres conveyed by Joseph Robinson to William Draper by deed dated February 19th 1850 recorded &c. in Book 39 of Deeds page 477 also another tract of about 21.82 acres conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th 1864 and recorded &c. in Book 300 of Deeds page 497 the second parcel hereby conveyed containing about 9ℓ acres more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions remainder and remainders rents issues and profits thereof; and also all the estate, right title, interest dower or right of dower property, possession, claim and demand whatsoever as well in law as in equity of the said parties of the first part, of, in
168 or to the above-described premises and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said William D. Kerfoot and Charles A. Kerfoot for themselves their heirs executors and administrators do hereby covenant promise and agree to and with the said party of the second part his heirs and assigns that they have not made done, committed executed or suffered any act or acts thing or things whatsoever whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof now are, or any time hereafter shall or may be impeached charged or encumbered in any manner or way whatsoever and the said William D. Kerfoot and Susan B. Kerfoot his wife Charles A. Kerfoot and Margaret K. Kerfoot his wife parties of the first part hereby expressly waive and release any and all right, benefit privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois A. D. 1851 and approved February A. D. 1851 and an act entitled "An act to amend an act entitled An act to exempt homesteads from sale on execution," passed by said assembly A. D. 1857 and approved February 17 A. D. 1857. Subject however to a certain incumbrance of twenty-five hundred ($2,500) dollars now upon said premises which the said party of the second part hereby assumes and agrees
169 with the said parties of the first part to pay at maturity and hold them harmless thereupon.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM D. KERFOOT. [SEAL.]
SUSAN B. KERFOOT. [SEAL.]
CHAS. A. KERFOOT. [SEAL.]
MARGARET K. KERFOOT. [SEAL.]

Signed, sealed, and delivered in presence—
HUGH S. GARA.
B. G. HEISTAND.

STATE OF PENNA., } ss:
Lancaster County, Lancaster, }

I, Joseph S. Gara, a notary public in and for and a resident of said city, in said county, in the State aforesaid, do hereby certify that Mrs. Susan B. Kerfoot, wife of Wm. D. Kerfoot, personally known to me to be — person whose name she subscribed to the foregoing special warranty deed, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act for the uses and purposes therein set forth; and the said Mrs. Susan B. Kerfoot, wife of the said William D. Kerfoot, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and re-
170 linquished her dower and all right, title, and interest to the lands and tenements therein mentioned without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and seventy-two.

[NOTARIAL SEAL.] HUGH S. GARA,
Notary Public.

STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, Richard J. Street, a notary public in and for and a resident of said city, in said county, in the State aforesaid, do hereby certify that William D. Kerfoot, Charles A. Kerfoot, and Margaret K. Kerfoot, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing special warranty deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument of writing as their free and voluntary act for the uses and purposes therein set forth; and said Margaret K. Kerfoot, wife of the said Charles A. Kerfoot, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of said deed having been by me made known *all* fully explained to her, acknowledged that she had freely and voluntarily executed the same

and relinquished her dower and all right, title, and interest
171 to the lands and tenements therein mentioned without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and seventy-two (1872).

[NOTARIAL SEAL.] RICHARD J. STREET,
Notary Public.

No. 107,593. . Filed for record Oct. 19th, A. D. 1876, at 2 p. m.
JAMES STEWART, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

[SEAL.] I, Samuel B. Chase, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the nineteenth day of October, A. D. 1876, as document No. 107,593, and recorded in Book 636 of Records, at page 636.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this thirteenth day of March, A. D. 1896.

SAM'L B. CHASE, *Recorder.*

172 I next offer in evidence a certified copy of a quitclaim deed from John V. Le Moyne and Julia M. Le Moyne, his wife, to John A. Lomax, said deed being dated on the 18th day of October, 1876, conveying said premises last described, and recorded on the 5th day of June, 1877, document No. 137,705, in Book 642 of Records, at page 382, and ask that the same be marked as "Defendant's Exhibit 6":

This indenture made this eighteenth day of October in the year of our Lord one thousand eight hundred and seventy-six between John V. Le Moyne and Julia M. Le Moyne his wife of the city of Chicago State of Illinois party of the first part and John A. Lomax of Chicago party of the second part witnesseth that the said party of the first part for and in consideration of six thousand dollars ($6,000) in hand paid by the said party of the second part the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, have remised released sold, conveyed and quitclaimed and by these presents do remise, release convey and quitclaim unto the said party of the second part his heirs and assigns forever all the right title, interest, claim and demand which the said party of the first part have in and to the following-described lot, piece or parcel of land to wit:

Being parts of the tract known as Robinson's reservation in township forty (40) north of range twelve (12) east of third (3rd) principal meridian.

The first parcel being bounded by commencing at the
173 southeast corner of the north section of said tract thence westerly along the south line of said north section 32 chains and 90 links to land conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th A. D. 1864, thence north along the east line of said last-mentioned land 16 chains, thence easterly on a line parallel to the south line of said section to the east line of said north section, thence south 16 chains to the place of beginning containing 52.64 acres more or less, and the second parcel hereby conveyed being described as a strip of land 16 chains in width from north to south and extending entirely across the north side of the south section of said reservation excepting however from said last-named strip two parcels thereof as follows: One tract about 10 acres conveyed by Joseph Robinson to William Draper by deed dated February 19th 1850 recorded &c. in Book 39 of Deeds page 477 also another tract of about 21.82 acres conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th 1864 and recorded &c. in Book 300 of Deeds page 497, the second parcel hereby conveyed containing about 96 acres more or less.

To have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or equity to the only proper use benefit and behoof of the said party of the second part their heirs and assigns forever. Subject nevertheless to a lease to Frederick H. Kline of the east 20 acres
174 of the north 16 chains of south section and also a lease to Walter Gray of the remainder of said lands, both of said leases expiring May 1st A. D. 1880.

In witness whereof the said party of the first part hereunto set hand- and seal- the day and year first above written.

JOHN V. LE MOYNE. [SEAL.]
JULIA M. LE MOYNE. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

STATE OF ILLINOIS, }
Cook County, City of Chicago, } *ss:*

I, Roswell B. Bacon, a notary public in and for the said county, in the State aforesaid, do hereby certify that John V. Le Moyne and Julia M. Le Moyne, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this nineteenth day of October, A. D. 1876.

[Seal of Roswell B. Bacon, Notary Public, Chicago, Ills.]

ROSWELL B. BACON,
Notary Public.

175 No. 137,705. Recorded June 5, A. D. 1877, at 3 p. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 5th day of June, A. D. 1877, as document No. 137,705, and recorded in Book 642 of Records, at page 382.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this twenty-fourth day of May, A. D. 1882.

JAS. W. BROCKWAY, *Recorder.*

I next offer in evidence a quitclaim deed from Alexander W. McClure to John A. Lomax, said deed being dated on the 31st day of October, 1885, conveying the same premises and recorded in the recorder's office of Cook county on the third day of November, 1885, at 12 o'clock m., and recorded in Book 1749 of Records, on page 1, and ask the same to be marked as "Defendant's Exhibit 7:"

176 This indenture witnesseth, that the grantor Alexander W. McClure of the city of Chicago in the county of Cook and State of Illinois for the consideration of fifty (50) dollars — convey and quitclaim to John A. Lomax of the city of Chicago county of Cook and State of Illinois all interest in the following-described real estate to wit:—Being parts of the tract of land known as Robinson's reservation in township forty (40), north range twelve (12) east of the third principal meridian, the first parcel being bounded by commencing at the southeast corner of the north section of said tract, thence westerly along the south line of said north section thirty-two chains and ninety links (32 ch. 90 lks.) to land conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th A. D. 1864; thence north along the east line of said last-mentioned land sixteen chains (16 ch.) thence easterly on a line parallel to the south line of said section to the east line of said north section thence south sixteen chains (16 ch.) to the place of beginning containing 52.64 acres more or less; and the second parcel hereby conveyed being described as a strip of land sixteen chains in width from north to south and extending entirely across the north side of south section of said reservation excepting however from said last-named strip two parcels thereof as follows: One tract of about ten (10) acres conveyed by Joseph Robinson to William Draper by deed dated February 19th 1850, recorded in the recorder's office of Cook county in Book 39 of Deeds page 477; also another tract of about 21.82 acres
177 conveyed by Joseph Robinson to Patrick Powers by deed dated July 5th 1864 recorded in the recorder's office of Cook county in Book 300 of Deeds page 497 the second parcel hereby conveyed containing about 96 acres more or less, situated in the county of Cook in the State of Illinois hereby releasing and waiving

all rights under and by virtue of the homestead exemption laws of this State.

Dated this 31st day of October A. D. 1885.

ALEXANDER W. McCLURE. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, P. T. McElherne, a notary public in and for said county, in the State aforesaid, do hereby certify that Alexander W. McClure, personally known to me to be the same person*s* whose name*s are* subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that *they* signed, sealed, and delivered the said instrument as *their* free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this third day of November, A. D. 1885.

[NOTARIAL SEAL.] P. T. McELHERNE,
Notary Public.

178 STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County.

AQUILLA H. PICKERING }
vs. }
JOHN A. LOMAX. }

It is hereby stipulated and agreed by and between the parties hereto that in lieu of any deeds or documents put in evidence by either party in this cause copies thereof may be inserted in the bill of exceptions.

JOHN P. AHRENS,
Attorney for Plaintiff.
JAMES MAHER,
Attorney for Defendant.

ALEXANDER W. McCLURE, called as a witness on behalf of the defendant, being duly sworn, was examined in chief by Mr. Maher as follows:

Q. What is you- name?
A. Alexander W. McClure.
Q. Where do you reside?
A. Chicago.
Q. How long have you lived in Chicago?
A. About 35 years or more, except some six years lately.
Q. Did you know a person named Joseph Robinson, an Indian?
A. Yes, sir.
179 Q. When did you first get acquainted with him?
A. In 1870.

Q. What was the occasion of your getting acquainted with Joseph Robinson?

A. He was brought to me by an acquaintance of mine as an Indian that had some rights. He wished to get some money out of it.

Q. Are you the Alexander McClure mentioned as the grantee in the deed from Joseph Robinson?

A. Yes, sir.

Q. Do you know where those lands are?

A. Yes, sir.

Q. You know where Joseph Robinson lived in relation to the lands which you bought from — at that time?

A. At the time I first saw him he lived in Chicago, in the city, and continued there until he died.

Q. When you negotiated for those lands with Joseph Robinson did you do anything in regard to getting the President's approval of the same?

A. I paid for the service of counsel, who advised him and assisted him.

Q. In doing what?

A. In obtaining the President's approval on his conveyance to me.

Q. The deed is dated November 22nd, 1870. At that date, Mr. McClure, had you paid to Joseph Robinson any part of the consideration for the premises?

A. Yes, sir.

180 Q. How much, as near as you can remember, had you paid him at that time?

A. $1 an acre earnest money.

Q. Was the consideration money paid for that proper- by you $5,000, Mr. McClure, do you remember?

A. Ultimately?

Q. Yes.

A. No, sir.

Q. How much did you pay altogether?

A. I cannot say.

Q. How much money had you paid to Robinson upon this property by February, 1871—the first of February?

A. Well, I have no record of the payments to him; all I know is I paid him $500 in addition to $1 an acre before the approval of the President was shown to me.

Q. Did you go on the land at the time you bought it?

A. No, sir.

Q. Did not go out there?

A. Yes, sir; I went out there, but did not go over the land.

Q. What was the condition of Robinson's reservation at the time you bought, was it enclosed or not?

A. Portions of it were enclosed, west of the river, and the ends east of the river that I saw.

Q. This land is east of the river?

A. I think it is all east of the river, but I am not sure.

Q. Did you make any examination of the records of Cook county

at the time you negotiated with Joseph Robinson to see
181 whether or not any deed was on record, with the approval of the President, as to the approval of this land?

A. Well, not personally.

Q. Well, did you cause one to be made?

A. Yes, sir.

Q. To whom was the deed delivered when it came back from Washington?

A. Joseph Robinson; it was mailed to him.

Q. How did you get it?

A. He brought it to me.

Q. Delivered it to you?

A. Yes, sir.

Q. Did you examine the deed?

A. Yes, sir.

Q. Did you see the signature of the President on it?

A. Yes, sir.

Q. Do you know the signature of U. S. Grant?

A. Well, I know it as well as I know any man's; I frequently saw it.

Q. Did you recognize it as being the genuine signature when you saw it upon that deed?

A. Yes.

Q. Did you find a prior approval of the President on record any time before that of any other deed?

A. No, sir; I did not, nor was there any on record.

Q. What did you do with the deed you got?

A. I kept it.

182 Q. Do you know whether the deed was placed on record or not?

A. I filed it for record as soon as I could.

Q. You filed it yourself, personally?

A. Yes, sir.

Q. If you had found a prior deed or a deed to any other person on record with the approval of the President thereon, would you have bought this land?

Objected to. Objection sustained; to which ruling of the court counsel for defendant then and there duly excepted.

Cross-examination.

By Mr. AHRENS:

Q. Who brought Mr. Robinson to you, Mr. McClure?

A. I think Mr. John Carpenter.

Q. What was said between you and him at the time?

A. I cannot give the conversation, sir.

Q. Well, the substance of it?

A. That he had rights as an Indian under a treaty; that it had never been conveyed with the approval of the President, which was required to make a conveyance valid, and that he wanted to sell those rights to me.

Q. Was there anything said at the time that he had undertaken to sell or convey the premises without the approval of the President?

A. Yes; he did not deny that, but he said he had not been paid.

183 Q. But he told you he had conveyed the premises before this?

A. Robinson did; yes, sir; he only proposed to convey such portions, as the conveyance by him had not been approved by the President.

Q. You say you did not examine the record?

A. I did not say I did not examine it. I say I had it examined.

Q. Who examined it for you?

A. I do not know what abstract man, but I know the law firm I employed, Merrick, John & Perkins.

Q. They informed you there had been a deed of record a good many years ago of this property?

A. No; I do not know they did.

Q. You knew it?

A. Yes; I knew it from Robinson.

Q. When was the first time you saw Robinson?

A. To the best of my recollection, in the spring of 1870.

Q. Do you remember the month?

A. No, sir; I do not.

Q. Did you make any contract with him before the deed was delivered to you?

A. Made an agreement with him.

Q. In writing?

A. I think not, sir; it might have been.

Q. Have you that agreement now?

A. No, sir.

Q. What is your recollection?

A. I am not sure about it.

184 Q. How much did you agree to purchase from him?

A. Whatever there was in the portion of the two sections that had been partitioned off to him which had not been approved by the President.

Q. How much did you agree to pay him per acre?

A. I cannot remember at this time.

Q. Don't you remember how much you agreed? Did you agree to pay him a certain amount in gross then?

A. I did in case—my recollection is I agreed to pay him a certain amount in gross in case the title was ever made good in me.

Q. How much did you agree to pay him on that condition?

A. I don't remember.

Q. About how much?

A. Well, I think it must be in the neighborhood of $50 an acre, but I cannot remember the exact amount.

The COURT:

Q. Do you remember how many acres you expected to get?

A. 150 or 140 odd; there were two conveyances.

Mr. AHRENS:

Q. You had two deeds from Robinson?
A. Yes, sir.
Q. When did you pay him a dollar an acre as earnest money?
A. Shortly after his introduction to me.
Q. How shortly after?
A. It was so long ago——
Q. About how long?

A. It was within the same year; it was within six months;
185 I am confident of that.

Q. How much did you pay him then—for how many acres did you pay him a dollar an acre?

A. Whatever number of acres in the two deeds. I think it was a hundred and thirty acres in one deed and twenty in another, or very nearly; it may have been a fraction less than that or more.

Q. Do you know how many acres there were in the deed which includes the property in question in this case?
A. Something near about 130.
Q. You paid him in all $150, then?
A. Oh, yes; that was before the deed was signed.
Q. Did you pay him anything else before the deed was delivered to you?
A. From Washington?
Q. Yes.
A. Yes, sir.
Q. How much more did you pay him?
A. I have no record of it.
Q. Have you any recollection?
A. No, sir.
Q. Can you tell approximately?
A. Well, I should think $500.
Q. $500 more?
A. Yes, sir.
Q. Before the deed was delivered?
A. Yes, sir.
Q. About how long after the first payment was the second payment?

A. Some time before the receipt of the deed from Wash-
186 ington; that is as near as I can get to it.

Q. About how long?
A. I have no way at all of fixing the time.
Q. How long after the first payment was it the deed was delivered to you?
A. The first payment? You mean how long before the deed was delivered to me from Washington?
Q. No; how long was it after you made the first payment that the deed was delivered to you from Washington?
A. Several months.
Q. How much did you pay him upon the delivery of the deed?

A. From Washington?
A. Yes.
A. I do not know I paid him anything when the deed came back from Washington.
Q. Is that all you paid him, $500, for both of these deeds?

Objected to.

The COURT:

Q. What is your recollection of the total amount you paid, all told?
A. I paid Robinson all the money I got for the land except what I had to pay out for expenses and a small margin what I retained for profit.
Q. Have you any recollection of the total amount?
A. No, sir.

Mr. AHRENS:

Q. Was it $1,000?
A. Yes, sir.
187 Q. Was it more than $1,000?
A. I think so.
Q. Was it $1,500?
A. Well, now, you are getting where I cannot answer.
Q. Do you think it was more than a $1,000?
A. I should think so; I don't remember how much I got for the land.
Q. To whom did you sell the land?
A. Mr. Wicker.
Q. Is he living?
A. I do not know, sir.
Q. Did you have anything to do with the approval of the President of this deed to you?
A. No, sir.
Q. You do not know anything about how the approval was obtained?
A. Yes, sir.
Q. What do you know?
A. I know counsel I paid and employed drew the papers, and Mr. Robinson sent them to Washington.
Q. Do you know personally Robinson sent them; didn't your counsel send them to Washington?
A. No; I know Robinson sent them himself.
Q. Did you procure the affidavit of this military man that was attached to the deed?
A. No, sir.
Q. You don't know anything about that?
188 A. Yes, sir.
Q. You do know about that?
A. Yes, sir.
Q. What do you know?

A. I knew Major Kinzie.

Q. Well, what do you know about procuring of his affidavit that was attached to this deed?

A. I made Mr. Robinson procure it.

Q. Did he do that at your request?

A. No, sir. Major Kinzie was an acquaintance of the Robinsons—an old acquaintance.

Q. Did you pay anything to Robinson after the deed was delivered to you?

Objected to.

The COURT: If you know anything more about it, tell us.

A. I do.

Mr. AHRENS:

Q. Did you pay after the delivery of the deed all at once or in different amounts?

A. Different amounts, I think.

Q. Did you pay it in different amounts, as you sold it, from time to time?

A. I cannot tell you, but I settled with him after I sold the property.

Whereupon court adjourned until 2 p. m.

2 p. m.—Court met pursuant to adjournment.

Mr. AHRENS: This tax abstract shows for the year 1882
189 taxes were paid both by Mr. Pickering and Mr. Lomax. Mr. Hawley, who was there at the time, went out to pay the taxes. If he were here, he would testify he paid first and while he was there, and Mr. Lomax came and paid him after he did. Mr. Hawley is trying a case before Judge Baker in the United States court and cannot be present here now.

The foregoing was all the evidence and exhibits offered or heard on the hearing of said cause.

And thereupon counsel for defendants asked the court to hold the following proposition of law:

"The defendants ask *to* court to hold as a proposition of law that whenever the question in any court, State or Federal, is whether the title to land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States, but that whenever according to those laws the title shall have passed, then that property, like all other property in the State, is subject to State legislation so far as that legislation is consistent with the admission that the title passed vested according to the laws of the United States."

Which proposition of law the court then and there held as law.

And thereupon counsel for defendants asked the court to hold the following proposition of law:

"The defendants ask the court to hold that under the law the

plaintiff has failed to establish his case, and to find the issues for the defendants."

190 But the court refused to hold such proposition; to the refusal whereof counsel for defendant then and there duly excepted.

And thereupon counsel for defendants asked the court to hold the following proposition of law:

"The defendants ask the court to hold as a proposition of law in this case that under the treaty and patent offered in evidence by the plaintiff in this case, the partition proceedings and the deeds given thereunder, and the decree entered therein, offered in evidence by the plaintiff, were not sufficient in law to convey any title to the plaintiff of the land in controversy."

But the court refused to hold said proposition of law, and to the refusal whereof counsel for defendants then and there duly excepted.

And thereupon counsel for defendants asked the court to hold the folllowing proposition of law:

"The defendants ask the court to hold as a proposition of law in this case that, as plaintiff has failed to prove that the permission of the President of the United States was in any way obtained or given to the conveyances of the land in question or the partition thereof under the partition proceedings offered in evidence by the plaintiff, such conveyances and partition proceedings are of no effect against these defendants."

But the court refused to hold said proposition of law, and to the refusal whereof counsel for defendants then and there duly excepted.

191 And thereupon counsel for defendants asked the court to hold the following proposition of law:

"The defendants ask the court to hold that the consent of the President, given by him to the conveyance from Joseph Robinson, should have been upon the original conveyance being produced to him for approval, and certified copies thereof were not sufficient."

But the court refused to hold said proposition of law, and to the refusal whereof the defendants then and there duly excepted.

And thereupon counsel for defendants asked the court to hold the following proposition of law:

"The defendants ask the court to hold as a proposition of law that in order for plaintiff to recover in this case against these defendants it was incumbent upon him to show by the records in the recorder's office of Cook county, Illinois, that prior to the time that defendants' grantors recorded their deed of the property in question showing the President's approval thereof that the Joseph Robinson conveyance to Horton in evidence had been approved by the President;" but the court refused to hold said proposition of law, and to the refusal whereof the defendants' counsel then and there duly excepted.

And thereupon counsel for defendants asked the court to hold the following proposition of law:

"The defendants ask the court to hold as a proposition of

192 law that in order for plaintiff to recover in this case against these defendants it was incumbent upon him to show upon

the record books in the recorder's office of Cook county prior to the time that defendants' grantors purchased that the Joseph Robinson conveyance to Horton in evidence had been approved by the President."

But the court refused to hold said proposition of law; to which refusal defendants' counsel then and there duly excepted.

Thereupon the court found the issues in favor of the plaintiff; to which finding by the court counsel for defendants then and there duly excepted.

And thereafter counsel for defendants moved the court to set aside said finding *ro* plaintiff and to enter a finding for defendants, and filed the following motion in writing:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

AQUILA H. PICKERING, Plaintiff, } Motion to Set Aside Finding
vs. } for Plaintiff and to Enter
JOHN A. LOMAX *et al.*, Defendants. } Finding for Defendants.

And now comes the defendants, by James Maher, their attorney, and moved the court to set aside the finding of the court for
193 the plaintiff herein and to enter a finding for the defendants.

And for grounds of such motion show—

That the finding of the court is contrary to and against the evidence.

That the finding of the court is against the law.

That the court should have found for the defendants.

That the court improperly admitted imcompetent evidence on the part of the plaintiff.

That the court improperly rejected competent evidence offered on the part of the defendants.

That the court improperly refused to hold propositions of law submitted by defendants.

That the court improperly held propositions of law submitted by plaintiff.

That the court should have held that the plaintiff fail*ing* to establish his case under the law and the evidence.

That the court improperly found for the plaintiff under the law.

And for other errors appearing of record.

(Signed) JAMES MAHER,
Attorney for Defendants.

But the court refused to set aside said finding and overruled said motion; to the overruling of which said motion defendants, by their counsel, then and there duly excepted.

194 And thereupon counsel for defendants moved the court for a new trial of the said cause, and filed the following motion in writing to that end:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County.

AQUILA H. PICKERING, Plaintiff,
vs.
JOHN A. LOMAX *et al.*, Defendants. } Motion for New Trial.

And now comes the defendants, by James Maher, their attorney, and move the court for a new trial of this cause, and for grounds for such motion show—

That the court improperly overruled defendants' motion herein to set aside the court's finding and to enter a finding for defendants.

That the finding of the court is contrary to and against the evidence.

That the finding of the court is against the law.

That the court should have found for the defendants.

That the court improperly admitted incompetent evidence on the part of the plaintiff.

That the court improperly rejected competent evidence offered on the part of the defendants.

195 That the court improperly refused to hold propositions of law submitted by defendants.

That the court improperly held propositions of law submitted by the plaintiff.

That the court should have held that the plaintiff failed to establish his case under the law and the evidence.

That the court improperly found for the plaintiff under the law.

And for other errors appearing of record.

(Signed) JAMES MAHER,
Att'y for Def'ts.

But the court refused to grant a new trial of said cause and overruled said motion; to the overruling of which said motion for a new trial counsel for defendant then and there duly excepted.

And thereupon the defendants moved the court in arrest of judgment. The court overruled said motion; to the overruling whereof defendants, by their counsel, then and there duly excepted.

And thereupon the court entered judgment in favor of plaintiff; to the entry of which said judgment and finding of the court the def-ndants then and there duly excepted.

196 And, forasmush as the matters above set forth do not fully appear of record, defendants tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made and provided, which is done accordingly this 21st day of September, 1896.

JOHN BARTON PAYNE, [SEAL.]
Judge of the Superior Court.

"O K."
J. P. AHRENS, *Pl'ff's Att'y.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County.

AQUILA H. PICKERING }
vs.
JOHN A. LOMAX. }

It is hereby stipulated and agreed by and between the parties hereto that the original bill of exceptions herein, instead of a copy thereof, may be incorporated in the transcript of record herein.

JOHN P. AHRENS,
Attorney for Plaintiff.
JAMES MAHER,
Attorney for Defendant.

197 And on the 21st day of September, A. D. 1896, there was filed in the office of said court a certain appeal bond, which is in words and figures as follows, to wit:

Know all men by these presents that we, John A. Lomax and George Lomax, of the county of Cook and State of Illinois, are held and firmly bound unto Aquila H. Pickering, also of the same county and State, in the penal sum of ten thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 21st day of September, A. D. 1896.

The condition of the above obligation is such that whereas the said Aquila H. Pickering did, on the 8th day of June, A. D. 1896, in the superior court of Cook county, in the State aforesaid, and of the term thereof A. D. 1896, recover a judgment against the above-bounden John A. Lomax for the possession in fee-simple of that certain piece, parcel, or tract of land, with the appurtenances thereon, situated in the county of Cook and State of Illinois, as follows, to wit: That part of Robinson's reservation, in township forty (40) north, range (12) twelve east, of the third principal meridian, bounded as follows: Commencing at a point nineteen and fifty-nine one-hundredths (19.59) chains west of the southeast corner of the north section of said Robinson's reservation and two and sixty-seven one-hundredths chains south of the south line of said

198 section, running thence west ten and seventy-two one-hundredths (10.72) chains; thence north eighteen and sixty-seven one-hundredths (18.67) chains; thence east ten and seventy-two one-hundredths (10.72) chains; thence south eighteen and sixty-seven one-hundredths (18.67) chains to the place of beginning; also commencing at a point on the south line of said north section eight and twenty-three one-hundredths (8.23) chains west of the southeast corner thereof, running thence north fourteen and ninety-five one-hundredths (14.95) chains; thence west eleven and thirty-six one-hundredths (11.36) chains; thence south seventeen and

sixty-one one-hundredths (17.61) chains; thence east eleven and thirty-six one-hundredths (11.36) chains; thence north two and sixty-seven one-hundredths (2.67) chains to the place of beginning, besides costs of suit; from which said judgment of the said superior court of Cook county the said John A. Lomax has prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said John A. Lomax shall duly prosecute his said appeal with effect and, moreover, pay the amount of the judgment, costs, interests, and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

JOHN A. LOMAX. [SEAL.]
GEORGE LOMAX. [SEAL.]

Approved:
JOHN BARTON PAYNE,
Judge Sup. Court.

199 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Stephen D. Griffin, clerk of the superior court of Cook county in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record, except the bill of exceptions, the original of which is by stipulation of the parties incorporated herein and made a part hereof, in a certain cause lately pending in said court, on the com. law side thereof, wherein Aquila H. Pickering was plaintiff and John A. Lomax was defendant.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at Chicago, this 22nd day of September, A. D. 1896.

STEPHEN D. GRIFFEN, *Clerk.*

Trans. fees $4.00 & paid.

200 In the Supreme Court of Illinois, Northern Grand Division.

JOHN A. LOMAX, Appellant,
vs.
AQUILA H. PICKERING, Appellee. } Assignment of Errors.

And now comes the appellant, John A. Lomax, by James Maher, his attorney, and assigns error herein, and for cause of such error shows—

That the finding of the court below is contrary to and against the evidence.

That its finding is against the law.

That the court should have found for the defendant.

That the court erred in admitting incompetent evidence on the part of the plaintiff below.

That the court improperly rejected competent evidence on the part of the defendant below.

That the court erred in refusing to hold propositions of law submitted by defendants below.

The court erred in improperly holding propositions of law submitted by plaintiff below.

The court should have held that the plaintiff below failed to establish his case under the law and the evidence.

The court erred in finding for the plaintiff under the law and the evidence.

The court erred in admitting evidence of the partition proceedings in the plaintiff's chain of title.

201 The court erred in overruling defendant's motion to set aside the court's findings and to enter a finding for defendant.

The court erred in overruling defendant's motion for a new trial.

The court erred in entering judgment for the plaintiff below.

And for other and manifest errors appearing of record.

Wherefore appellant prays a reversal of the said judgment, with directions to the court below.

October term, 1896.

JAMES MAHER,
Attorney for Appellant.

202 And afterwards, to wit, on the 27th day of October, A. D. 1896, the same being one of the regular days of said term of court, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

JOHN A. LOMAX
vs.
AQU-LA H. PICKERING. } No. 117. Appeal from Cook Superior.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

203 At a supreme court begun and held at Ottawa, on Tuesday, the sixth day of October, in the year of our Lord one thousand eight hundred and ninety-six, within and for the northern grand division of the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; David J. Baker, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Maurice T. Moloney, attorney general; Charles J. Yockey, sheriff; Alfred H. Taylor, clerk.

Be it remembered, to wit, on the 19th day of January, A. D. 1897, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

JOHN A. LOMAX
v.
AQUILA H. PICKERING. } No. 4180, 117. Appeal from Superior Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error, therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor.

204 At a supreme court begun and held at Ottawa on Tuesday, the sixth day of October, in the year of our Lord one thousand eight hundred and ninety-six, within and for the northern grand division of the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; David J. Baker, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Maurice T. Moloney, attorney general; Charles J. Yockey, sheriff; Alfred H. Taylor, clerk.

Be it remembered that afterwards, to wit, on the 19th day of January, 1897, the opinion of the court was filed in the clerk's office of said court in words and figures following, to wit:

JOHN A. LOMAX
vs.
AQUILA H. PICKERING. } No. 117. Error to —. Appeal from Cook Superior.

205 No. 117.

Opinion by Craig, J.

This was an action of ejectment brought by A. H. Pickering against John A. Lomax to recover certain premises in Cook county described in the declaration. On a trial in the circuit court the

plaintiff recovered and the defendant has appealed. For the purpose of establishing title the plaintiff on the trial introduced in evidence the following article 4 of the treaty between the United States and the Indians in vol. 7 of United States Statutes at Large, 320:

ARTICLE IV.

Certain Tracts to be Granted to Certain Descendants from the Indians.

There shall be granted by the United States to each of the following persons (descendants from Indians) the following tracts of land, to wit:

To Claude Laframboise one section of land on the Riviere aux Pleins, adjoining the line of the purchase of 1816.

To Francis Bourbonne, Jr., one section at the missionary establishment on the Fox river of the Illinois.

To Alexander Robinson, for himself and children, two sections on the Riviere aux Pleins above adjoining tract herein granted to Clause Laframboise, &c.

The plaintiff also read in evidence a patent for the land bearing date Dec. 28th, 1843. The treaty and the patent both contained the following provisions: "To have and to hold the said
206 tract of land with the appurtenances unto the said Alexander Robinson, for himself and children, and to his or their heirs and assigns forever," but never to be leased or conveyed by him, them, his, or their heirs "to any person whatever without the permission of the President of the United States."

Plaintiff then read in evidence the proceedings in a certain cause in the Cook county court, wherein Joseph Robinson is complainant and Alex. Robinson *et al.* defendants. Petition for partition wherein the lands in controversy were set off to Joseph Robinson.

Joseph Robinson to John F. Horton. } Deed, Aug. 3rd, 1858.

Recorded July 16, 1861.
(No approval of President.)

Joseph Robinson to John F. Horton.

Certified copy of above deed certified to by recorder August 1st, 1870.

Recorded March 12th, 1873.

This certified copy has annexed to it certain documents showing it was submitted to Department — Interior Jan. 6th, 1871; submitted to President Jan. 21st, 1871.

Approved by President Jan. 21st, 1871.

This was followed by a regular chain of deeds from John F. Horton to the plaintiff. The defendant claimed title under
207 the following conveyances:

Joseph Robinson
to
Alexander U. McClure.

Deed dated Nov. 22d, 1870; submitted to Interior Department Feb'y 21st, 1871; submitted to and approved by President Feb. 24th, 1871; recorded March 11th, 1871.

The defendant connected himself with Alex. U. McClure by mesne conveyances from McClure to himself.

This is the second time this case has been in this court. On the first trial, in the supreme court, the plaintiff in the action was defeated, and on appeal to this court we affirmed the judgment. Pickering *vs.* Lomax, 120 Ill., 291. We held, under the provision in the treaty and in the patent prohibiting a sale of the premises without the permission of the President of the United States, the deed made by Robinson without the approval of the President did not pass the title. A Federal question being involved, Pickering, the plaintiff, removed the case to the Supreme Court of the United States, where the judgment of this court was reversed and the cause remanded, the court holding that the President having approved the deed from Robinson to Horton thirteen years and six months after it was executed validated the instrument. Pickering *vs.* Lomax, 145 U. S., 313. Upon the second trial in the superior court the plaintiff offered the same evidence offered by him on the first trial (excepting evidence of tax titles, of which there is none
208 in the present record), so that the evidence of appellee's title now before this court is precisely the same as it was before.

The plaintiff's title resting in the deed from Joseph Robinson to John F. Horton, dated August 3rd, 1858, and approved by the President Jan'y 21st, 1871, having been sustained in the Federal question, which was the vital question in the case, it now only remains to be determined whether the evidence introduced on the second trial by the defendant, which is now for the first time before the court, was sufficient to defeat the title of the plaintiff.

In the opinion of the Supreme Court of the United States it is said:

"If after executing this deed Robinson had given another to another person with the permission of the President a wholly different question would have arisen; but, so far as Robinson and his grantees are concerned, the approval of the President related back to the execution of the deed and validated it from that time. As was said by this court in Cook *v.* Tullis, 18 Wall, 332, 338: 'The ratification operates upon the act ratified precisely as though authority to do the act had been previously given, except where the rights of third parties have intervened between the act and the ratification. The retroactive efficacy of the ratification is subject to this qualification. The intervening rights of third persons cannot be defeated by the ratification.'"

And it is said by appellant that his grantor, McClure,
209 having obtained a deed from Robinson Nov. 22, 1870, before the deed from Robinson to Horton was approved by the President, he falls within the exception and is entitled to protection. If the McClure deed had been approved by the President before the President approved the deed made to Horton, the position of appellant might be regarded as well taken; but such was not the case. The deed made to McClure, appellant's grantor, was not approved, and hence did not become a valid conveyance until Feb. 24th, 1871, while in the meantime and on January 21st, 1871, the President approved the Horton deed. Thus the Horton deed, under the ruling of the Federal court, became and was a valid conveyance of the land almost a month before the McClure deed was approved and became effectual as a conveyance. Where, as here, two deeds were executed by the same grantor the deed first approved by the President will carry the title.

But it is said that the McClure deed is entitled to priority under the recording laws of the State. Sec. 28 of our statute, entitled Conveyances, provides that "deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this State shall be recorded in the county in which such real estate is situated."

By sec. 30 of the same act it is provided that "all deeds, mortgages, and other instruments in writing which are authorized to be recorded shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors
210 and subsequent purchasers, without notice, and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers without notice until the same shall be filed for record."

Here the McClure deed, under which appellant claims, with the approval of the President indorsed thereon, was recorded in the recorder's office of Cook county March 11th, 1871, while the Horton deed, containing the approval of the President, was not recorded until March 12th, 1873, and it is contended that the deed first recorded bearing the approval of the President will take priority over the other deed recorded at the later date. As respects the approval of the President, required by the treaty and the provision in the patent to render the deed effectual, we do not think the recording laws have any bearing upon it. There was a record of the approval of the President in the department at Washington, and that record was notice to all concerned from the time it was made, and we do not think the recording laws of the State required a copy of that record to be recorded in the recorder's office where the land is located. A record of that character is similar to a patent issued by the President for lands that belong to the Government, which is not required to be recorded in the county where the land is located.

In 20 Am. & Eng. Ency. of Law, page 530, the author says: "Patents of land from the United States do not come within the purview of the recording laws of the different States when the terms em-

ployed do not specially include them. The original record
211 in the General Land Office, from which patents are issued, has been held to give notice to the world of their existence," citing—

Curtis *v.* Hunting, 6 Iowa, 536.
David *v.* Rickabaugh, 32 Iowa, 540.
Rhinehard *v.* Schuyler, 7 Ill., 473 (2 Gilm.).
Moran *v.* Palmer, 13 Mich., 367.
Sands *v.* Davis, 40 Mich., 14.
Evitts *v.* Roth, 61 Tex., 81.
Graves *v.* Brown, 1 Gilm., 167.

It was not necessary that the approval of the President should be endorsed in the deed. The approval might have been endorsed in a petition presented to him for his approval or he might have made a record of the application with his approval without endorsing it on any paper. The record made in the department would be the evidence of the fact. It is also claimed that plaintiff failed to establish title to the lands in question, because it does not appear that the partition proceedings in case of Joseph Robinson *vs.* Alex. Robinson *et al.*, under which Joseph Robinson obtained the title to the premises in dispute on the portion of the lands granted to Alex. Robinson and his children, were not approved by the President. When the Horton deed was presented to the President for his approval, as appears from the record in connection with the deed, the President was furnished a statement in regard to the patent issued to Alex. Robinson and his children; also that a petition for partition had been filed by Joseph Robinson *vs.* Alex. Robinson
212 *et al.*; that a decree had been rendered and the lands divided, and that 256 acres had been set off to Joseph Robinson, as shown by a plat presented. Those facts were all before the President at the time he made the order approving the Horton deed, and we are inclined to hold that if the proceedings required approval the approval of the Horton deed executed by Joseph Robinson, predicated as it was upon the partition proceedings, was in contemplation of law an approval of the partition proceedings. The judgment of the superior court will be affirmed.

Affirmed.

213 STATE OF ILLINOIS, } ss:
Supreme Court, Northern Grand Division, }

I, Christopher Mamer, clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Ottawa, June 8, 1897.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

214 At a supreme court begun and held at Ottawa on Tuesday, the second day of March, in the year of our Lord one thousand eight hundred and ninety-seven, within and for the northern grand division of the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; David J. Baker, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Edward C. Akin, attorney general; Charles J. Yockey, sheriff; Christopher Mamer, clerk.

Be it remembered, to wit, on the ninth day of March, A. D. 1897, the same being one of the regular days of said term of court, certain proceedings were had by said court and entered of record, among which is found the following, viz:

JOHN A. LOMAX *vs.* AQUILA H. PICKERING. } No. 117. 64 R. H. Appeal from Cook Superior.

Now, on this day, this cause coming on to be heard upon the petition of the appellant for a rehearing, and the court being now duly advised in the premises, it is considered and ordered by the court that said petition for rehearing be overruled and denied.

And it is further considered by the court that the said petitioner pay the costs and charges herein taxed.

215 STATE OF ILLINOIS, *Cook County,* } *ss:*

JOHN A. LOMAX *vs.* AQUILA H. PICKERING.

To the Honorable Benjamin D. Magruder, chief justice of the supreme court of Illinois:

And now comes John A. Lomax, by James Maher, his attorney, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between John A. Lomax, appellant, and Aquila H. Pickering, appellee, in the supreme court of the State of Illinois, northern grand division, being the highest court of law or equity of the said State in which a decision could be had in said suit, and in which a final judgment was rendered against him, the said John A. Lomax, on the 19th day of January, A. D. 1897, in said suit, wherein was set up, relied upon, and claimed by said appellant:

1st. A right required under and by virtue of the fourth article of the treaty between the United States of America and the united nations of the Chippewa, Ottawa, and Pottawatomie Indians of the waters of the Illinois, Milwaukee, and Manitouck rivers, made and concluded at Prairie du Chien, in the Territory of Michigan, now Wisconsin Territory, on the 29th day of July, A. D. 1829, which provided that there should be granted by the United States to Alexander Robinson, for himself and children, two sections on the Riv-ere

aux Pleins above and adjoining the tract granted to Claude
216 La Framboise, which provided that said tract of land should never be leased or conveyed by the grantee or *their* heirs to any person whatever without the permission of the President of the United States; that your petitioner claims to hold title to and possession of the lands in controversy in said suit through said treaty and said Robinson, by virtue of the deed mentioned in the record in the case and put in evidence by petitioner, which was executed and delivered by Joseph Robinson, one of the children of said Alexander Robinson, to your petitioner's grantor, which said deed was thereupon approved by the President of the United States and duly recorded in the recorder's office of Cook county, Illinois, prior to a certain other deed of the same lands from the said Joseph Robinson to the grantor of Aquila H. Pickering, appellee herein, and that the question involved and to be decided in this suit was whether the prior recording of the deed of petitioner's grantor and the taking possession of the lands in controversy brought your petitioner within the scope and meaning of "the intervening rights of third persons," according to the decision of the United States Supreme Court in the case of Pickering *v.* Lomax, 145 United States Supreme Court Reports, page 315.

2nd. It was also set up, claimed, and relied upon in this suit by your petitioner that under and by virtue of the provisions and inhibitive and restrictive clauses of the said treaty no title passed to
the said Aquila H. Pickering, appellee herein, by virtue of
217 the deed from said Joseph Robinson to said appellee's grantor, for the reason that Joseph Robinson obtained no title to the lands in controversy by virtue of a certain partition proceedings had in Cook county, Illinois, between said Alexander Robinson and his children, and obtained no title to said lands in controversy by virtue of certain partition deeds made between the said Alexander Robinson and his children, in which said deeds and partition proceeding- it is insisted by your petitioner that the inhibitive and restrictive clauses of the said treaty were not complied with, no approval of the President of the United States having ever been obtained to either the said partition proceedings or partition deeds, and that a question to be decided by the supreme court of Illinois was whether under the provisions of the said treaty the said Alexander Robinson and his children could convey and pass a good title to the lands in controversy *inter se* without the permission or approval of the President of the United States.

And that said supreme court of the State of Illinois construed said treaty provisions and the restricting clauses thereof and held, amongst other things, that your petitioner acquired no title to said lands by virtue of the prior recording of his grantor's deed from said Joseph Robinson and his possession of the lands in controversy under said deed, and that the rights of your petitioner were not the "intervening rights of third persons" within the meaning of the decision of the Supreme Court of the United States, and further held that the said partition proceedings and deeds had by and be-

tween the said Alexander Robinson and his children did not
218 require the express permission or approval of the President of the United States and did not come within the provisions and restrictive clauses of the said treaty.

And your petitioner represents that he had in said cause title and right claimed under a treaty of the United States, and that the decision of said supreme court of the State of Illino is was against said title and right which in said cause was claimed and set up by your petitioner, and that under section 709 of the Revised Statutes of the United States and the provisions of the law of the United States decisions of such nature may be reviewed by writ of error by the Supreme Court of the United States.

And your petitioner further represents that a Federal question, to wit, the construction of a treaty, was in said cause presented for decision to said supreme court of Illinois, and that its decision was necessary for the determination of said cause, and that such Federal question was actually decided, and that the judgment as rendered could not be given without deciding it.

All of which appears in the record and proceedings in said suit, whereby manifest error happened, to the great damage of the said John A. Lomax; wherefore he prays for an allowance of a writ of error and a citation, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

JAMES MAHER,
Attorney for said John A. Lomax.

The writ of error herein prayed for is hereby allowed.

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of State of Illinois.

May 29th, A. D. 1897.

Endorsed: "Filed June 3, 1897. C. Mamer, clerk of the supreme court."

219 Know all men by these presents that we, John A. Lomax, as principal, and James H. Lomax and George Lomax, of Chicago, Illinois, as sureties, are held and firmly bound unto Aquila H. Pickering, of Chicago, in said State of Illinois, in the full and just sum of eight thousand dollars ($8,000.00), to be paid to said Aquila H. Pickering, his executors, administrators, or assigns; to which payment, well and truly to be made, we, the said John A. Lomax, for himself, his heirs, executors, and administrators, and the said James H. Lomax and George Lomax, for themselves, their heirs, executors, and administrators, bind ourselves, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of May, in the year of our Lord one thousand eight hundred and ninety-seven (A. D. 1897).

Whereas lately, at a supreme court of the State of Illinois, within and for the northern grand division thereof, in a suit depending in said court between said John A. Lomax, as appellant therein, and the

said Aquila H. Pickering, as appellee therein, a judgment was rendered against the said John A. Lomax, and the said John A. Lomax having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and the citation directed to the said Aquila H. Pickering, of Chicago, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., the second Monday of October next:

Now, the condition of the above obligation is such that if the said John A. Lomax shall prosecute the said writ of error to
220 effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

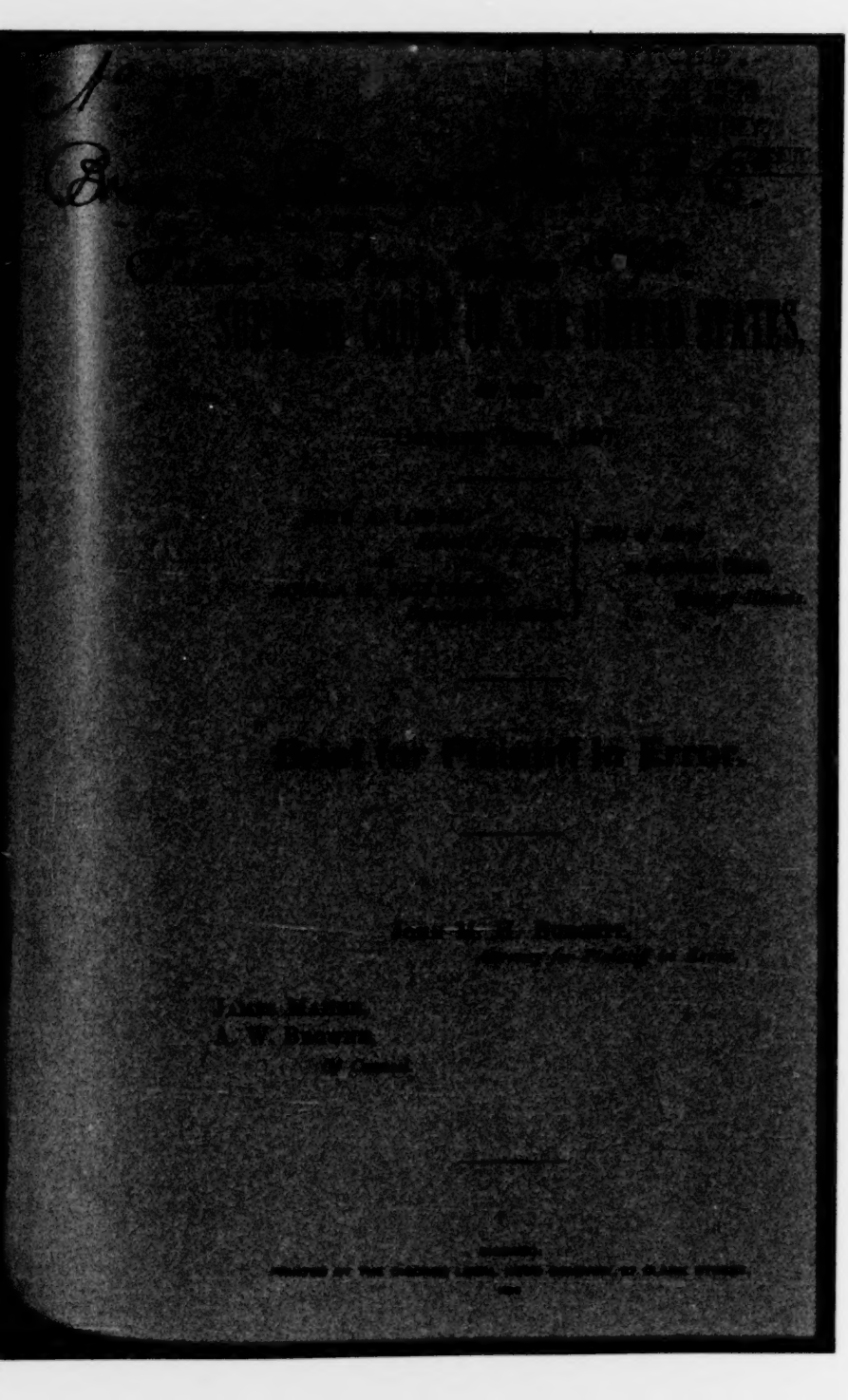
JOHN A. LOMAX. [SEAL.]
JAMES H. LOMAX. [SEAL.]
GEORGE LOMAX. [SEAL.]

Approved by—
BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of the State of Illinois.

May 29th, A. D. 1897.

Endorsed: "Filed June 3, 1897. C. Mamer, clerk of the supreme court."

Endorsed on cover: Case No. 16,609. Illinois supreme court. Term No., 396. John A. Lomax, plaintiff in error, *vs.* Aquila H. Pickering. Filed June 14, 1897.



No. 16,609.

IN THE

SUPREME COURT OF THE UNITED STATES

OF THE

OCTOBER TERM, 1897.

JOHN A. LOMAX,
Plaintiff in Error,
vs.
AQUILA H. PICKERING,
Defendant in Error.

Writ of Error to Supreme Court, State of Illinois.

Brief for Plaintiff in Error.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

This is a writ of error to the Supreme Court of the State of Illinois, whereby John A. Lomax, the plaintiff in error, seeks to reverse a judgment of that court in an action of ejectment. The lands in controversy consist of two certain parcels in Cook county, Illinois, and there is no dispute about the *quantum* of land or its metes and bounds. The questions before this court are purely those of law as to the validity of the conveyances, records and chain of title through which the parties to this cause respectively claim title, and the element of possession for many years established by plaintiff in error.

The lands involved in the title were originally conveyed by the United States through an Indian treaty, and by a subsequent patent to certain Indians under certain conditions and restrictions, and the questions here involved relate to a construction of those grants and the validity of certain deeds thereunder, together with the question as to the requirements of the conveyance and recording laws of the State of Illinois, and of the United States.

As this case has already been before the United States Supreme Court, which reversed the former finding of the State Supreme Court, for reasons appearing hereafter—

Pickering v. *Lomax*, 145 U. S. page 310—

we deem it more conducive to a full understanding of its present position, to give a short synopsis of the past litigation. In such *resume* of the case we omit all reference as to what was said or held as to tax titles, because, on this present appeal, neither party relies upon a tax title. In the present appeal, however, this plaintiff in error has assigned errors relating to defects in the record title of defendant in error which were not in the previous litigation before any court.

The action was originally commenced on May 5, 1883, and was tried without a jury before the Superior Court of Cook County, Illinois, and at the close of the plaintiff's (Pickering) case, without calling upon the defendant (Lomax) to offer any evidence, the court held that the plaintiff had failed to establish such a title as was necessary to a recovery, and entered a judgment in favor of the defendant. And thereupon Pickering sued out a writ of error to the Supreme Court of Illinois, which court, after a full hearing, affirmed the judgment of the

lower court, whereupon the said plaintiff sued out a writ of error in the United States Supreme Court, which court reversed the judgment of the State Supreme Court, and whereupon the cause was remanded back to the Superior Court of Cook County on the 5th day of October, 1892, and thereafter, a jury being waived, another trial was had which resulted in a judgment in favor of defendant in error, and which judgment was affirmed by the State Supreme Court on the 6th October, 1896, and a petition for rehearing denied on March 2, 1897, and the case was brought up to this court by writ of error June 1, 1897.

One of the questions then before those courts and still before this court, at bar, which is necessarily involved in Pickering's chain of title, relates to the construction of a treaty made by the United States of America and the United Nations of Chippewa, Ottawa and Pottawatomie Indians, made and concluded at Prairie du Chien July 29, 1829, as Pickering derived his title from a descendant of one of the Indians, to wit, one Joseph Robinson. The construction of the patent issued by the United States government under the provisions of the above treaty is also involved. The patent was dated December 28, 1843, and conveyed the lands subject to certain conditions to an Indian named Alexander Robinson, for himself and children, the Joseph Robinson through whom Pickering claims title being a son of the said Alexander Robinson. The treaty and provisions are set out in the transcript of record, page 12, and the patent appears on page 13 of transcript.

As it is necessary for this court to be fully informed of the merits of the case it has heretofore passed upon, and

in order to avoid recapitulation and prolix explanations, we deem it best at the outset to quote from the former opinions of the Illinois Supreme Court and of this court.

Pickering v. *Lomax*, 120 Ill. Supreme Court, 291.

"This was an action of ejectment brought by Aquila H. Pickering against John Lomax and William Kolze, to recover two certain parcels of land in Cook county, which are particularly described in the declaration. The parties waived a jury, and submitted to a trial before the court, which resulted in a judgment in favor of the defendants, and the plaintiff sued out this writ of error.

"On the trial, for the purpose of establishing title, plaintiff offered in evidence Article 4 of the Treaty between the United States and the Ottawa, Chippewa and Pottawatomie Indians, contained in the United States Statutes at Large, Volume 7, page 321:

"There shall be granted by the United States to each of the following persons (being descendants from Indians) the following tracts of land, viz., to Claude Laframboise, one section of land on the Riviere aux Pleins, adjoining the line of the purchase of 1816; to Francois Bourbonne, Jr., one section at the missionary establishment on the Fox River of the Illinois; to Alexander Robinson, for himself and children, two sections on the Riviere aux Pleins, above and adjoining the tract herein granted to Claude Laframboise. The tracts of land herein stipulated to be granted shall never be leased or conveyed by the grantees or their heirs to any person whatever without the permission of the president of the United States."

"The plaintiff also put in evidence a copy of a patent issued by the United States, December 28, 1843, under

the provisions of the treaty granting the lands to Alexander Robinson, for himself and children, which contains this provision: 'But never to be leased or conveyed by him, them, his or their heirs, to any person whatever, without the permission of the President of the United States.' Plaintiff also introduced in evidence proceedings in partition, instituted February 22, 1847, in the Cook County Court of Common Pleas, between Alexander Robinson and his children, of the lands granted by the patent wherein the lands in question were set off to Joseph Robinson. The plaintiff also introduced evidence tending to establish the following conveyances: Deed dated August 3, 1858, from Joseph Robinson and wife to John F. Horton; administrator's deed of Severn Stevens, administrator of John F. Horton, deceased, to Moses W. Baer, dated October 6, 1863—this deed having been made in pursuance of an order of sale, by the County Court of Cook County, for payment of debts. Then followed several intermediate conveyances of the premises, down to a deed dated November 10, 1866, from Henry H. Dyer and wife to Aquila H. Pickering, the plaintiff. The deed from Robinson and wife to Horton, executed August 3, 1858, has indorsed upon it the approval of the president of the United States, of date *January 21*, 1871.

"The treaty under which the lands were granted to Alexander Robinson and his children was concluded on the 29th day of July, 1829. Whether the deed executed August 3, 1858, from Joseph Robinson and wife to John F. Horton, without the permission of the President of the United States, was sufficient to pass the title to the lands attempted to be conveyed involves a construction of the

last clause of the treaty set out above, and also that clause of the patent prohibiting a conveyance without permission of the President. The object of the condition, in restraint of sale, is manifest. It was designed for the benefit and protection of the Indian, as a safeguard to protect property bestowed upon him against fraud, imposition, and his own improvidence in the disposition of his lands. The wisdom of such a provision, in view of the condition of the Indian at the time, and his liability to be defrauded out of his property unless the protecting hand of the government was interposed in his behalf, is not nor can not be questioned.

" It is true that the patent issued to Robinson granted the fee in the lands and we are not unmindful of the fact that a limitation upon the fee as a general rule, is contrary to the policy of our law. But we think it is well settled, in a case of this character, that effect will be given to conditions imposed in a treaty, and a patent issued by the government in pursuance of a treaty made with the Indian tribes. The patent under which Robinson and his children derived their title to the land prohibits a lease or conveyance of the land by all or either of them without the permission of the president of the United States. The grant was made in pursuance of a treaty between the government and the Indian tribes upon this condition. This mode of conveyance having been provided, by necessary implication any other is prohibited, and being prohibited, it would seem to follow that the deed was invalid and passed no title.

" A case in many respects similar to this is *Smith* v. *Stevens*, 10 Wall. 321. There a treaty was concluded by

the United States in June, 1825, with the Kansas Indidians. The sixth article provided that there should be reserved to each of the half-breeds (Victoria Smith being one of them) certain lands. The eleventh article provided that the Indians shall never sell or dispose of the lands reserved without the permission of the United States for that purpose first had and obtained. On May 26, 1860, Congress passed an act referring to the treaty of 1825, and reciting that the land reserved had been surveyed, and allotted to each of certain half-breeds, in accordance with the sixth article of the treaty; that all the title, interest and estate of the United States is hereby vested in said reservees.

The second section of the act provided that the Secretary of the Interior, upon the request of the reservees, is authorized to sell such lands for the benefit of such reservees, in accordance with the rules and regulations to be prescribed by the Commissioner of Indian Affairs, and approved by the Secretary of the Interior. On the 14th day of August, 1860, Victoria Smith, one of the half-breeds, being in possession of her tract, executed a deed purporting to convey it to one Stevens, and he went into possession of the land. Subsequently, Victoria Smith brought ejectment against Stevens, to recover the land. As a defense, he relied upon the deed of August 14, 1860, but the State courts of Kansas held the deed was void, and this ruling was affirmed in the Supreme Court of the United States.

In the case cited, the treaty provided that the lands reserved should not be conveyed without the consent of the United States, and the act of Congress, subsequently

passed, vested the title in the Indians or half breeds, and provided for a sale by the Secretary of the Interior, on request of the Indians. This mode of sale was disregarded and an absolute deed made without the consent of the Secretary of the Interior, while in the case under consideration the treaty and patent require the consent of the President to a sale. It seems plain that the rule which should control one case should be binding in the other. In disposing of the case in the Supreme Court, it is said: "It was considered by Congress to be necessary, in case the reservees should be desirous of relinquishing the occupation of their lands, that some method of disposing of them should be adopted which would be a safeguard against their own improvidence; and the power of Congress to impose a restriction on the right of alienation, in order to accomplish this object, can not be questioned."

"It is also said: 'The sale in question not only contravened the policy and spirit of the statute, but violated its positive provisions.' The conclusion of the court is, that under the treaty and law in force at the date of the deed, Victoria Smith had no power to sell, and as the Secretary of the Interior never authorized the sale or consented to it, the sale was void, and the deed passed no title. Here the deed was made, as was said before, without the permission of the President, and in violation of the treaty and the provisions of the patent, and if no title passed in the case cited, as was held, for the same reason we must hold no title passed in this case. It is true that thirteen years after the deed in question was made, and after the death of the grantee, it was approved by the President; but we

do not regard this as a compliance with the conditions upon which a sale might be made. The sale was consummated, if at all, upon the execution and delivery of a deed. The validity of this act required the consent of the President. It was not obtained, and the act was nugatory, and could not be validated by any subsequent attempted approval."

Thereupon the court, after adverting to some tax deeds, affirmed the judgment of the lower court, holding that Pickering had failed to establish any title.

We will now proceed to set out in substance, the opinion of the Supreme Court of the United States, when the case was last before it on writ of error. The opinion of the court delivered by Mr. Justice Brown (*Pickering* v. *Lomax*, 145 U. S., page 313):

"This case turns upon the question whether the act of Congress prohibiting Indian lands from being conveyed, except by permission of the President, is satisfied by his approval indorsed upon a deed thirteen years after its execution, and after the death of the grantee and the sale of the land by his administrator. (The court first goes on to dispose of the question of jurisdiction of the United States Supreme Court over the writ of error, which is not pertinent at bar, and then proceeds):

"So far as the main question is concerned, we know of no reason why the analogy of the law of principal and agent is not applicable here, viz.: That an act in excess of an agent's authority, when performed, becomes binding upon the principal, if subsequently ratified by him. The treaty does not provide how or when the permission of the President shall be obtained, and there is certainly

nothing which requires that it shall be given before the deed is delivered. *Doe* v. *Beardsley*, 2 McLean, 412. It is doubtless, as was said by the Supreme Court of Mississippi in *Harmon* v. *Partier*, 12 Sn. & Marsh, 425, 427, 'a condition precedent to a perfect title' in the grantee; but the neglect in this case to obtain the approval of the President for thirteen years only shows that for that length of time the title was imperfect, and that no action of ejectment would have lain until the condition was performed. Had the grantee, the day after the deed was delivered, sent it to Washington, and obtained the approval of the President, it would be sticking in the bark to say that the deed was not thereby validated. *A delay of thirteen years is immaterial, provided, of course, that no third parties have in the meantime legally acquired an interest in the lands.*

"*If, after executing this deed, Robinson had given another to another person, with the permission of the President, a wholly different question would have arisen. But, so far as Robinson and his grantees are concerned*, the approval of the President related back to the execution of the deed and validated it from that time. As was said by this court in *Cook* v. *Tullis*, 18 Wall. 332, 338: 'The ratification operates upon the act ratified precisely as though authority to do the act had been previously given, except where the rights of third parties have intervened between the act and the ratification. The retroactive efficacy of the ratification is subject to this qualification. *The intervening rights of third persons can not be defeated by the ratification.*' See also *Fleckner* v. *Bank of the United States*, 8 Wheat. 338, 363. In *Ashley* v. *Eberts*, 22 Indiana, 55, a

similar act of the president approving a deed was held to relate back and give it validity from the time of its execution, so as to protect the grantee against a claim by adverse possession which arose in the interim between its date and the confirmation. 'Otherwise,' said the court, 'a mere trespassser, by taking possession after a valid sale and before its consummation, would have power to defeat a *bona fide* purchaser.' This case was approved in *Steeple* v. *Downing*, 60 Indiana, 478, 497.

"In *Murray* v. *Wooden*, 17 Wend. 631, a conveyance of land by an Indian which, subsequent to its date, had been ratified by a certificate of approbation of the surveyor-general in the form prescribed by law, was held to be inoperative upon the ground that, previous to the granting of such certificate, the Indian had conveyed to a third person, and the deed to such person had been approved in the mode prescribed by law previous to the indorsement of the certificate of approbation of the deed first executed. This was a clear case of rights intervening between the execution of the first deed and its approval. In *Smith* v. *Stevens*, 10 Wall. 321, the right to convey the lands reserved for the benefit of the Indians was expressly vested in the Secretary of the Interior, upon the request of any one of the Indians named, and it was held that there being no ambiguity in the act which had provided the way in which the lands could be sold, by necessary implication it prohibited their being sold in any other way. 'The sale in question not only contravened the policy and spirit of the statute, but violated its positive provisions.' In that case there was no pretense that the requirements of the act had been fulfilled.

"Nor do we consider it material that the grantee had in the meantime died, since, if the ratification be retroactive, it is as if it were indorsed upon the deed when given, and inures to the benefit of the grantee of Horton, the original grantee—not as a new title acquired by a warrantor subsequent to his deed inures to the benefit of the grantee, but as a deed, imperfect when executed, may be made perfect as of the date when it was delivered. This was the ruling of the court in *Steeple* v. *Downing*, 60 Indiana, 478.

"The object of the proviso was not to prevent the alienation of lands *in toto*, but to protect the Indian against the improvident disposition of his property, and it will be presumed that the President, before affixing his approval, satisfied himself that no fraud or imposition had been practiced upon the Indian when the deed was originally obtained. Indeed, the record in this case shows that the President did not affix his approval until affidavits had been presented, showing that Pickering was the owner, and that the amount paid to Robinson was the full value of the land, and that the sale was an advantageous one to him.

"We are constrained to differ with the Supreme Court of Illinois in its view of the treaty, and *to hold that, so far as this question is concerned*, plaintiff's chain of title contained no defect."

It will be seen, from the opinion of the United States Supreme Court, that it only passed upon the question of law and the status of the case as *then* presented to it, and the then position of the case was that it had been submitted to the courts solely upon the case made out by the

plaintiff in ejectment, and that no evidence whatever had been offered in the court below as to the rights or title of the defendant, Lomax, because the lower court had held that Pickering having failed to make out his title it became unnecessary for Lomax to offer any evidence in defense.

Of course, if the case *now* made at bar, had been exactly similar to the case formerly presented, this court would feel itself bound by its former decision, and we therefore desire to point out the difference between the case now presented and as formerly presented so as to show that this court is in no way bound or controlled at bar by the decision formerly rendered by it.

In the first place, we now come within the very exceptions referred to by this court; and in fact the very words of its opinion, as now applicable at bar, would render the opinion now favorable to us at the present stage of the litigation. It will be observed all through that opinion that the court is very careful to predicate its decision solely upon the validity of the Horton deed as between the Indian and Horton and the government, and expressly excepts any case where the rights or title of third parties have intervened in the lands.

The court says (page 315): "*A delay of thirteen years in obtaining the approval of the President, is immaterial, provided, of course, that no third parties have in the meantime legally acquired an interest in the lands, if, after executing this deed, Robinson had given another to another person with the permission of the President, a wholly different question would have arisen.* * * * The ratification operates upon the act ratified precisely as though authority to do the

act had been previously given, except where the rights of the third parties have intervened between the act and the ratification. The retroactive efficacy of the ratification is subject to this qualification. The intervening rights of third persons can not be defeated by the ratification. * * * And in concluding its opinion the court says: 'We are constrained to differ with the Supreme Court of Illinois, *in its view of the treaty*, and to hold that, *so far as this question is concerned*, plaintiff's chain of title contained no defect.'"

In the case now made at bar, we submit that we have clearly established that Lomax and his grantors by purchase and deeds of conveyance had acquired intervening rights as third parties, and that therefore Pickering's chain of title was defective as against them, and came within the very exceptions referred to in the opinion, so that the opinion itself is not antagonistic to our rights now presented, but expressly favorable to them, and it must be constantly borne in mind that when that opinion was rendered, that none of the rights of Lomax nor of any third parties had been established, or were in evidence in the case.

Here at bar, we have established that at the time Lomax's grantors acquired title to the lands in question, there was absolutely nothing of record in the Cook county recorder's office to show that the original deed from the Indian, Robinson, to John F. Horton, had been approved by the President. It appears from the record (Transcript 28), that a copy of a deed from Joseph Robinson to John F. Horton, dated August 3, 1858 (page 30, Transcript), was submitted to the Department of the Interior, January

6, 1871, and submitted to the President on January 21, 1871, and approved by the President, January 21, 1871 (Transcript 31), and was recorded in Cook county, March 12, 1873.

The deed through which Lomax claims, namely, from Joseph Robinson and wife to Alexander McClure, was dated November 22, 1870 (Transcript 74), and was submitted to and approved by the President February 24, 1871 (Transcript 76), and recorded in the recorder's office of Cook county, March 11, 1871 (Transcript 84), and it will be seen that at the time McClure was negotiating for title, and at the date of his deed from Joseph Robinson, there was nothing upon the records of Cook county to apprise McClure that any previous deed given by Robinson to Horton had been approved by the President, and as a matter of fact no such approval had been given at that time. Horton, it appears, had waited over thirteen years to get the approval of the President, and after he had obtained it waited over two years longer to record it; whilst on the other hand McClure had obtained his deed and the Indian had himself obtained the President's approval upon it (Transcript 97), and McClure had finally recorded it, all within the space of three or four months, and there was surely nothing at that time to apprise McClure that any other deed to anybody else had been approved by the President; there was certainly nothing in the records of Cook county to show that the approval of the President had been obtained to any other deed, and there is no proof whatever that any deed from Robinson was then to be found on record in Washington in any department; surely, under such circumstances, McClure was a

third party with existing rights within the express meaning and limitations of the Federal court's opinion; and, of course, Lomax was a grantee under McClure's title and occupied the same position. We shall hereafter in this argument allude to the requirements of the recording acts of the State of Illinois in regard to the question of record title. It may be said, in passing, that this question of the requirements of the recording acts, either State or Federal, was not formerly before the courts in this case, because, of course, no intervening rights of third persons had been shown, so that the law relating thereto comes up also as a new question in the case at bar.

MEMORANDA OF DATES FOR CONVENIENT REFERENCE RELATING TO JOSEPH ROBINSON DEEDS.

In Pickering's Title.	In Lomax Title.
Joseph Robinson to John F. Horton. } Deed, Aug. 3d, 1858. Recorded July 16, 1861, in Cook county, Ill. (No approval of President.)	Joseph Robinson to Alexander W. McClure. } Deed, dated Nov. 22, 1870. Submitted to Interior Department Feb'y 21st, 1871. Submitted to and approved by President, Feb. 24th, 1871. Recorded March 11th, 1871, in the recorder's office of Cook county, Illinois. (Transcript 84.)
Joseph Robinson to John F. Horton. } Certified copy of above deed, certified to by Recorder August 1st, 1870. Recorded March 12th, 1873, in Cook county, Ill. This certified copy has annexed to it certain documents showing it was submitted to Department Interior Jan. 6th, 1871; submitted to President, Jan. 21st, 1871. Approved by President, Jan. 21st, 1871. No evidence of any recording in Washington till March 7, 1896. (Transcript 21.)	

Another new question which now comes up in the case, and which point has not heretofore been raised at the former hearings, is the want of validity of any title acquired by Pickering or his grantors under the partition proceedings in Cook county, and upon which necessarily his chain of title must rely. We take the position that no rights could be acquired by Pickering or his grantors, under any partition deeds or partition proceedings, unless the approval of the President had been obtained thereto, and there is no pretense in this case on the part of Pickering or his counsel that any such approval had or has at any time been obtained, and we shall make this part of our argument, and our exceptions were duly taken to this evidence. (Transcript, page 20, 21.)

So that to shortly sum up some of the differences now existing between this case, as formerly passed upon by the Federal court, and the case now presented, we have, amongst other things :

First: The evidence now offered by appellant Lomax at bar, which brings us within the exceptions and the law, as laid down by this court, in regard to the rights acquired by us as *third* parties.

Second: The construction of the Illinois recording act as applied to our rights.

Third: The validity of the partition proceedings, and the deeds thereunder.

Fourth: Absolute failure on the part of defendant in error to show any record title in Washington till within the last two years.

ASSIGNMENT OF ERRORS.

a In the Supreme Court of the United States.

JOHN A. LOMAX, Plaintiff in Error,
vs.
AQUILA H. PICKERING, Defendant in Error.
} Assignment of Errors.

And now comes John A. Lomax, the plaintiff in error, by John M. H. Burgett, his attorney, and assigns errors committed by the Supreme Court of the State of Illinois in this cause, and for cause of such errors shows:

1. That said Supreme Court of the State of Illinois erred in its construction of the treaty between the United States of America and the United Nations of Chippewa, Ottawa and Pottawatomie Indians of the waters of Illinois, Milwaukee and Manitouck rivers, made and concluded at Prairie du Chien on the 29th day of July, 1829.

2. That the Supreme Court of the State of Illinois erred in its construction of article four of said treaty.

3. That said court erred in holding against the validity of the provisions and restrictions contained in article four of said treaty as applied to the case made and title shown by the plaintiff in error.

4. That said court erred in holding that the defendant in error established such a title to the lands in question as enabled him to recover under the provisions and restrictions contained in said article four of said treaty as against the plaintiff in error upon the case made on the record at bar by the respective parties.

5. The said court erred in holding that the ap-

b proval of the President of the United States to the deed put in evidence by plaintiff in error from Joseph Robinson and wife to Alexander W. McClure was insufficient to give validity to said deed and confer title in the plaintiff in error as against the title of the defendant in error in evidence at bar.

6. The court erred in holding the partition proceedings and deeds in evidence in the chain of title produced by the defendant in error did not require evidence of the permission or approval of the President under the case presented at bar.

7. The court erred in holding that under the law the defendant in error established such a title or case as enabled him to recover against the plaintiff in error.

8. The court should have held that the defendant in error failed under the law to establish such a title as permitted a recovery against plaintiff in error upon the case presented at bar.

9. The court should have held that there was no legal evidence or notice at the time the deed from Robinson to McClure was approved by the President that the deed from Robinson to Horton had ever been approved or any permission given therefor by the President, and that therefore the defendant in error could not recover in the case at bar.

10. The court should have entered judgment for the plaintiff in error.

11. The court erred in entering judgment for the defendant in error.

12. The judgment and finding of the said court is against the evidence.

13. The judgment and finding of the said court is against the law.

14. The court erred in considering incompetent evidence on behalf of the defendant in error.

15. The court erred in refusing to consider competent evidence on the part of the plaintiff in error.

16. The court erred in considering evidence of the partition proceedings in the chain of title adduced by the defendant in error and in holding the same to be legal evidence in said chain of title as against the case made by plaintiff in error.

17. The court erred in entering judgment for the defendant in error, and for other and manifest errors appearing of record; wherefore plaintiff in error prays a reversal of the said judgment of the Supreme Court of the State of Illinois, with directions to the said court.

Argument of Law.

As we have heretofore seen, the result of the original litigation was, that the State Supreme Court held that the deed of Joseph Robinson to Horton was void, and passed no title, and that the subsequent permission of the President indorsed thereon did not make the deed valid. The Federal court held that the subsequent permission of the President related back, and did make the deed valid *simply* as *between the parties.*

When the case again came up before the Illinois Supreme Court it delivered an opinion which seems to have been predicated upon the mistaken assumption "that there was a record of the approval by the President in the

department at Washington." (See opinion, page 111, Transcript.)

In the first place, we need only to mention the axiomatic proposition of law, that the plaintiff in ejectment must recover on the strength of his own title, and not by the weakness of the defendant's title, and to the other well known proposition, that the burthen of proof in ejectment cases is upon the plaintiff to show that the defendant, as a subsequent purchaser, had notice of the plaintiff's rights.

We need not go into all the *minutiæ* of the various dates of instruments and dates of recording, because counsel for appellee will not contend that at the time the deed through which we claim was obtained, approved and filed for record, there was any deed from Robinson to Horton with the approval of the President upon or annexed to it, on file in the recorder's office of Cook county; there was nothing absolutely then and there on file, to show that any prior deed of the lands to any person had been approved by the President. And a person who waits over thirteen years before completing his title is certainly chargeable with *laches*. Our deed was the first deed filed for record with the approval of the President upon it. It is, of course, an elementary proposition, in all matters affecting the record title to lands, that the law of the *situs* prevails.

Though it was not necessary to record the patent from the United States, we claim it was essentially necessary to record any *deed* issued under that patent and that such recorded deed should show that it was in all respects a valid deed, as required by any condition or restrictions

in the patent; in other words, the record should have shown that everything had been complied with to make it a valid deed. And failing this, it could rightfully be treated by a subsequent purchaser as no deed; he was bound only by what appeared of record and not by anything which might have been done outside the record unless he had notice. Everybody knew, or was supposed to know, the laws of the country, and the existing restrictions upon conveyances by Indians, and these restrictions were clearly set out in our original patent, which we produced at the trial (Transcript, page 13), and any deed appearing of record, unsanctioned by the President, amounted to no more than if the Indian had conveyed the whole of the United States.

We claim that the provisions of the Illinois recording acts are mandatory upon the appellee; that after the patent had once issued from the United States, anything thereafter relating to the title, would be subject to the directions of the State law, and its provisions with regard to the recording of instruments; and the United States Supreme Court emphatically holds this to be the law in the case of

Wilcox v. *Jackson*, 13 Peters, U. S. 498,

(which is a case affecting the Fort Dearborn lands in Cook county). The court says, on page 517: "We hold the true principle to be this, that whenever the question in any court, State or Federal, is whether a title to land, which had once been the property of the United States, has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, *then that property, like all*

other property in the State, is subject to State legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States." Or as Mr. Washburne, in treating upon the subject of title by grant, puts it (3d Washburne on Real Property, 3d Edition, page 169):

"But as soon as the title shall have passed from the United States, it takes the character of other property within the State and is subject to State legislation."

The Illinois recording act provides, Sec. 28, Par. 29, title, Conveyances, page 590, 1 Starr & Curtis.

"Deeds, mortgages, powers of attorney, *and other instruments*, relating to or affecting the title to real estate in this State, shall be recorded in the county in which such real estate is situated."

By Sec. 30, Par. 31, of the same act, it is provided that "All deeds, mortgages and *other instruments in writing*, which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and *not before*, as to all creditors and subsequent purchasers without notice; and all such deeds and *title papers* shall be adjudged void as to all such creditors and subsequent purchasers without notice until the same shall be filed for record."

Our Illinois Supreme Court has held that the records of the county commissioners' court showing sales of land, are not notice, either actual or constructive, to subsequent purchasers, that the title should be recorded in the proper recorder's office, and that that is the only place one is required to look.

Bourland v. *County of Peoria*, 16 Ill. 538.

It is also held that the entry of lands sold by the United States upon the land book in the county clerk's office of the county where the lands are situated, affords no constructive notice of the facts appearing therefrom to subsequent purchasers.

Betser v. *Rankin*, 77 Ill. 289.

And these cases have been approved by the Federal courts.

Lewis v. *Barnhardt*, 43 Fed. Rep. 854.

Our Illinois Supreme Court also holds that "a subsequent purchaser has a right to presume, in the absence of any other information, that whatever title the prior purchaser has, is on record, as the law requires it to be, and that he has no title if the record shows none."

St. John v. *Conger*, 40 Ill. 535.

The Appellate Court of Illinois in an opinion by Mr. Justice Bailey, holds that "The record of a deed or mortgage is constructive notice to subsequent *bona fide* purchasers or incumbrancers of only what appears on the face of the instrument as recorded. The rule that what is sufficient to put a purchaser upon inquiry is notice of whatever the inquiry would have disclosed, has no application. That rule applies to actual, not constructive notice."

Buttenhouser v. *Bullock*, 11 Illinois Appellate, 665.

A void instrument puts no one upon inquiry as to anything not contained therein.

Bullock v. *Buttenhouser*, 103 Ill. 28.

Now at the time our deed of Robinson to McClure was

given, which was on the 22d of November, 1870, it is clear that at that time, as a matter of fact, the President had never approved the deed from Robinson to Horton; for that approval was not obtained until the 21st of January, 1871, some two months later. It is true it was approved by the President about a month before ours was, but such approval was not recorded until about two years after our deed was filed for record with the President's approval upon it. We say that we had no means of ascertaining what might have been done privately by the President in Washington, but were required to look only to the archives of Cook county and see if anything had been done; and in the absence of any information upon the subject, we had a right to presume that nothing had been done, as the deed then on record discloses no Presidential approval.

And there is no reason why we should be held to have any constructive notice; and even as to the doctrine of constructive notice, both the Illinois court and this court have followed the doctrine laid down by Vice Chancellor Wigram and Lord St. Leonards; and say in the case of

Grundies v. *Reed*, 107 Ill. 312,

"When mere want of caution as distinguished from fraudulent and willful blindness, is all that can be imputed to a purchaser, then the purchaser will, in equity, be considered, as in fact he is, a *bona fide* purchaser without notice." This is clearly Sir Edward Sugden's opinion, and with that sanction, I have no hesitation in saying it is mine also. Or as said by Lord Chancellor Cranworth, "the question upon constructive notice is not whether the purchaser had the means of obtaining, and

might, by prudent caution, have obtained the knowledge in question, but whether the not obtaining it was an act of culpable negligence."

The United States Supreme Court also quotes the same language and asserts it to be undoubted law.

Wilson v. *Wall*, 6 Wall. U. S. 91.

We fail to see upon such a state of facts as developed by this record with regard to the question of recording and the rights of subsequent purchasers, how Pickering can be said to have legally established his title as against us. Certain it is that the approval of the President to the deed could be manifested in no other way than in writing, and was in fact, manifested in writing immediately it was obtained; hence, we say within the meaning of the recording laws, it was "an instrument in writing affecting the title of real estate," and a title paper clearly within the express provisions, meaning and intent of the Illinois recording act.

The United States Circuit Court of Kansas expressly holds that "The recording of a conveyance made by an Indian of a tract of land (which had been allotted to him in severalty) before he had a right to convey the same *is no notice to subsequent grantees of the land of the former grantee's rights.*"

Briggs v. *Sample*, 43 Federal Reporter 102.

BESIDES, THERE IS ABSOLUTELY NOTHING IN THE CASE ESTABLISHED BY DEFENDANT IN ERROR, OR ANYWHERE IN THE RECORD TO SHOW WHEN OR AT WHAT TIME THIS CERTIFIED COPY OF HIS DEED FROM ROBINSON TO HORTON, WITH THE APPROVAL OF THE PRESIDENT UPON IT, WAS RECORDED

IN WASHINGTON. THERE IS NO EVIDENCE AT ALL WHEN THIS CERTIFIED COPY OF DEED, RELIED UPON BY HIM, WAS RECORDED IN WASHINGTON. AT THE TIME WE OBTAINED THE PRESIDENT'S APPROVAL UPON OUR DEED, THERE IS NOTHING WHATEVER IN THIS RECORD TO SHOW THAT WE COULD HAVE DISCOVERED ANYTHING WHATEVER OF RECORD IN WASHINGTON AS TO ANY OTHER DEEDS AND PRESIDENTIAL APPROVEMENTS TO ANY OTHER PERSON WHOMSOEVER.

And yet the Supreme Court of Illinois say, that if we only looked at the records in Washington, we could have found out.

The only proof that defendant in error attempted to offer of any such record, appears (on pages 21 and 22 of Transcript), where he offers a certificate of D. M. Browning, commissioner of Indian affairs, dated at Washington, March 7, 1896 (only two years ago), certifying the paper attached is a true copy of the certified copy of the original deed from Robinson to Horton, as the same appears of record in the Department of the Interior, but there is nothing to show *the date of its record.*

The most that can be said from this certificate, or from any other proof adduced, is that on the 7th of March (1896), such an instrument was *then* appearing of record at Washington.

Whether or not such an instrument appeared of record in Washington before that time, as a matter of fact does not appear anywhere upon the record at bar, and from all the record at bar shows, certain it is that there was no record notice in Washington which could disclose to the President himself, or to the grantors of Lomax, when

the approval of the President to their deed was obtained, that any instrument relied upon by defendant in error was then and there recorded at all.

It must be remembered that our deed (Robinson to McClure) was approved by the President February 24, 1871, and from defendant in error's own standpoint it was necessary for him to show at least that before that time, the Washington records disclosed a prior deed or an approved deed from Robinson to Horton, and of that there is positive failure of any proof.

In plain English, and divested of all technicalities and specific dates, defendant in error contends that if we had only looked in Washington we could have found out something which his own evidence fails to show we could have found out; and we know of no rule of law in regard to record title, or anything else, which makes it incumbent upon us to ascertain the existence of something which a plaintiff in ejectment has absolutely failed to prove to be in existence.

An admitted and necessary link in the plaintiff's chain of title, and necessary for him from his own standpoint to furnish, was a prior record title in Washington, and from his own record he has absolutely failed to furnish any proof of such title.

We desire to point out, in concluding this branch of the subject, that of course no presumption can be indulged in that this instrument was recorded the same day it was submitted to the President, because in the first place presumptions of record title can not be indulged in, and if they could, it plainly appears, from appellee's own case, that there were quite long delays in

Washington in getting instruments from one department to another; for instance, there was a delay of over two weeks in getting this very deed out of the Interior Department to the President, for it was submitted to the Department of the Interior January 6, 1871, and not submitted to the President until January 21st, and if any presumptions were indulged in, it is likely it took much longer time before it got back again and was finally recorded; and as our deed was submitted to the President in one month thereafter, the question of the date of appellee's record would be a very important factor if the Washington record controlled; but of course this court is not going to indulge in any presumptions, in any event. It is quite evident that President Grant himself could find no record of any previous deed or approval or he would certainly not have approved two separate deeds of the same lands to different people; this of itself affords a fair presumption that no prior deed was on record in Washington, but in any event there is no proof whatever by defendant in error of any such record.

Cooley, in his work on Constitutional Limitations, third edition, page 378, says: "Conceding that an invalid deed may be made good as *between the parties*, yet, while it remains invalid and the grantor still retains the legal title to the lands, and a third person is purchaser and received a conveyance, with no notice of any fact which should preclude his acquiring an equitable as well as a legal title thereby, it would not be in the power of the legislature to so confirm the original deed as to divest him of the title he has acquired. The position of the case is altogether changed by this purchase. The legal

title is no longer separated from the equities, but in the hands of the second purchaser is united with the equity as strong as it exists in favor of him who purchased first; and under such circumstances even the courts of equity must recognize the right of the second purchaser as best, and as entitled to the usual protection which the law accords to vested interests," etc.

The Supreme Court of the United States has itself unqualifiedly approved the decisions of the Supreme Court of the State of Illinois, with regard to the enforcement of the strict requirements of the recording laws of the State of Illinois, and held that unless every essential requirement of those recording laws with regard to record title is complied with, a subsequent purchaser can not be held to have constructive notice of anything that does not appear on the face of the record itself.

Lewis v. *Bernhart*, 145 U. S. pp. 56-75, etc.

Or as laid down by the Illinois court, in refuting an argument similar to one made by appellee at bar: "This proposition in effect is that if a person has got a deed of a tract of land having no recorded title, he must, nevertheless, be supposed to have had some title, and subsequent purchasers must take notice of whatever title he had. Much as registry laws have been frittered away by the doctrine of putting parties upon inquiry, we do not think any court has ever gone to the extent of adopting this rule. It would substantially defeat the object of registry laws. Their object is to provide a public record which shall furnish to all persons interested authentic information as to the title to real estate, and enable them to act on the information thus acquired. This rule would require a

person purchasing from one who has the title on record, to take subject to the unrecorded deeds of persons claiming under a chain of title having no connection of record with the true source of title. If such purchaser is to be held to notice of such chain of title at all, he has the right to presume in the absence of any other information *that whatever title the persons claiming under such chain have, is on record as the law requires it to be, and that they have no title if the record shows none.*

St. John v. *Conger*, 40th Ill. pp. 535, 537.

Or as again said by that court, "to take the case out of the registry acts so as to defeat the title of a subsequent purchaser, who first places his deed upon record, on the ground that he had actual notice of a prior unrecorded deed of the same premises, the proof of such notice should be clear and positive so as to leave no reasonable doubt that the taking of the second conveyance was under the circumstances an act of bad faith toward the first purchaser."

Rogers v. *Wiley*, 14th Ill. p. 66.
Robertson v. *Wheeler*, 162 Ill. 566.

Or as said by that court, "the words subsequent (purchasers), as used in the recording act, must have reference to the recording, and not to the date of the instrument, and such indeed is, its literal and grammatical construction. As between the grantor and grantee the transaction is complete upon the execution and delivery of the deed; but as between the grantee and third persons without notice that purchase may be said not to be complete till the title paper is left for record.

Doyle v. *Teas*, 4th Scammon, p. 253.

Or, as said by the United States Supreme Court: "The general rule is where several parties set up conflicting claims to property with which a special tribunal may deal, as between one party and the government, regardless of the rights of others, the latter may come in to the ordinary courts of justice and litigate the conflicting claims, and the State courts have jurisdiction to inquire into them."

Garland v. *Wynn*, 20th Howard, U. S. p. 8.

The Supreme Court of the United States in passing upon the validity and requirements of the Illinois State laws relating to the transfer of lands within that State, notwithstanding the inquiry as to the title may be in a United States Court, holds the law to be that the laws of the State of Illinois in which the land is situated control exclusively its descent, alienation and *transfer*, and the effect and construction of instruments intended to convey it, and the laws there and then in existence when a contract in regard to real estate is made, enter into and become a part of such contract, and after quoting and reviewing numerous Illinois and other decisions say (page 636) we will close the citations by using the language which had the unanimous consent of the court. In the recent case of *Magoon* v. *Scales*, 9th Wallace, 23: "*It is a principle too firmly established to admit of dispute at this day that to the law of the State in which the land is situated, must we look for rules which govern its descent, alienation and transfer and for the effect and construction of conveyances.*"

Brine v. *Insurance Co.*, 96 U. S., pages 627–635, 636.

The learned author, Mr. Wharton, in his treatise on Conflict of Laws, says, *that the law of situs must always prevail in the recording of titles to real estate; otherwise a person would have to search the records of every State, and then he could not guard against other incumbrances which might have been made whilst he was on his travels,* and then concludes: "The only relief is the adoption of the *lex rei sitæ*. By "this is prescribed a field of exploration which is easily "defined and as easily examined. No incumbrances "exist on the land that the law of its situation does not "indicate. A purchaser knows what is the law as to such "incumbrances, and knows where they are to be found "He knows that, subject to this law, he can obtain a per-"fect title which the law will defend to the end."

Wharton on Conflict of Laws, 2d edition, Sec. 284 (*h*).

And to the same effect see Story on Conflict of Laws, 8th edition, Sec. 424, 428.

The United States Courts fully adopt this rule.

U. S. v. *Crosby*, 7 Cranch 115.
Clark v. *Graham*, 6 Wheaton, 577.
Kerr v. *Moon*, 9 Wheaton, 565.

And even in a case where land was devised to the United States Government, they hold the law of the State *situs* prevailed and prevented the land from passing.

U. S. v. *Fox*, 94 U. S. 315.

Under the requirements of the Illinois recording laws as construed, both by the United States Supreme Court, and by the Illinois court, and under all the authorities we fail to see how defendant in error made out any case,

even assuming that there had been any record notice in Washington.

II.

We also claim that no legal title could be acquired by the defendant in error which came through the proceedings in partition in the courts of Cook county, and the deeds made thereunder.

The provisions of the patent issued under the Indian treaty were " but never to be leased or conveyed by *him, them, his or their heirs* to any person whatsoever without the permission of the President." (Transcript 15.)

We think it self-evident that under this provision *no* conveyance could be made to any person, or by one Indian to another Indian, any more than from an Indian to a white man.

It is self-evident by the partition deeds that some of the Robinson Indians did convey, each to the other, the lands in controversy, without any pretense of having, at any stage in these proceedings, obtained the approval of the President, and that the lands in controversy were set off to Joseph Robinson thereunder. The object of the treaty and patent provision was to protect the Indian against himself and the machinations of any person whatever, whether he were a white man or a red man. We claim, in short, that defendant in error failed to establish his chain of title, because he could derive no title through any partition deeds which were never approved or sanctioned by the President; and the fact that the County Court made a decree in partition, can in no way give validity to those deeds which we say required the approval of the President just the same as any other deed.

III.

Of course we are not called upon to absolutely establish in every minute detail the validity of our title in defending an action of ejectment, the burden is upon appellee to establish a title superior to ours. The undisputed fact remains, that we fairly bought this land from the Indian, Robinson, and paid him a fair compensation for it, and that he came to us to sell us the land, telling us that he had not previously been paid for it by anybody else, and that any deed that he had made had been done without the approval of the President, and when our deed was approved by the President it was mailed back from Washington to Robinson himself and he brought it and delivered it to us. (Transcript 96 and 97.)

To succeed in ejectment, plaintiff is of course bound to show in himself a fee simple title at law as distinguished from any equitable title.

Esker v. *Heffernan*, 159th Ill., page 38–41.

Perhaps this argument may be best concluded in the terse and forcible language of the Illinois court in a case decided by it, as very applicable to the facts at bar. In the case of *Kennedy* v. *Northrup*, 15 Ill., page 148–157, this court says: "By the fault of some one the land has been twice sold, from which some one must suffer; and is it not right, is it not in harmony with every principle of law, that he who is in fault in not notifying the world by recording his deed, shall suffer the loss which has resulted from such negligence."

Under the present status of this case, where the rights of plaintiff in error, as a third party, are now so plainly

apparent, it seems to us that the subsequent ratification of the President, can not relate back and give validity to a void conveyance, as this court has so expressly held in the case of

Smith v. *Stevens*, 10 Wallace, 321.

Leaving this case, as we now leave it, with full confidence in the decision of this honorable court, we have only to say in conclusion, that whatever the United States Supreme Court may have *heretofore* said upon any branch of this case, has now absolutely nothing whatever to do with the question of our rights, as third parties generally, or of the validity of the partition proceedings, or of the requirements of the recording acts; because, when the case was formerly before the Federal Court, *there was then no question of intervening rights of third parties or record notice to subsequent purchasers before it, either of record notice in Washington, or record notice in Illinois.* But we now come by the case at bar, and show ourselves to be *bona fide* subsequent purchasers for valuable consideration, without legal notice, actual or constructive, of record title anywhere; and so coming, now confidently assert upon this record, this court can do no other than reverse the erroneous judgment of the Illinois court with proper directions to it.

And we respectfully submit that such judgment must and necessarily will be, so reversed.

JOHN M. H. BURGETT,
Attorney for Plaintiff in Error.

JAMES MAHER,
A. W. BROWNE,
Of Counsel.

No. 123.

Sup. Ct. U. S.
FILED
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Clerk.

Sup. Ct. No. 16,669.
Reply Brief for Burgett for P.

IN THE

SUPREME COURT OF THE UNITED STATES,

Filed Dec. 14th, 1898.

OCTOBER TERM, 1897.

JOHN A. LOMAX,
Plaintiff in Error,
vs.
AQUILA H. PICKERING,
Defendant in Error.

Writ of Error to Supreme Court, State of Illinois.

Reply Brief for Plaintiff in Error.

JOHN M. H. BURGETT,
Attorney for Plaintiff in Error.

JAMES MAHER,
A. W. BROWNE,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

OF THE

OCTOBER TERM, 1897.

JOHN A. LOMAX,
Plaintiff in Error,
vs.
AQUILA H. PICKERING,
Defendant in Error.

Writ of Error to Supreme Court, State of Illinois.

Reply Brief for Plaintiff in Error.

MAY IT PLEASE THE COURT:

The brief filed by the defendant in error herein, upon an analysis of his argument, may be summarized as a contention that a *bona fide* purchaser of Indian lands in the State of Illinois, must buy them at his peril, and that no State or Federal laws applicable to the purchase of other real estate and the recording of conveyances thereof have any bearing upon the subject.

In the case at bar, the grantors of plaintiff in error purchased the land of a certain Indian, Joseph Robinson, in reliance upon the terms and conditions of a

certain treaty between the United States of America and the United Nation of Chippewa, Ottawa and Pottawatomie Indians, and a patent issued pursuant to that treaty, which treaty and patent the plaintiff in error and the whole world was bound to take notice of, and both of which provided that the said land could never be sold or conveyed without the consent of the President of the United States. Plaintiff in error's grantor McClure, looked in the recorder's office of Cook county, Illinois, where the lands were situated, and found no record of any such permission having been granted, and he looked in vain in the records in Washington and could find no such permission, and it is not contended by counsel for the defendant in error that there is any proof that any such permission of the President had been recorded in Illinois, or that there was legal evidence of record in Washington at the time the grantors of plaintiff in error obtained their deed. (It must be remembered also that the *original* Horton deed never had, nor has it now, upon the face, the approval of the President upon it). The counsel for defendant in error simply takes the position that if, as a matter of fact, the President of the United States had approved some prior conveyance of the land by the Indian, that the plaintiff in error was bound to know that fact, although there was no possible means of finding it out. His argument virtually amounts to a contention that if any President of the United States had at any time given permission to the Indian by a written assent, which such President may have kept in his own pocket, or by a mere verbal assent, that it would be the duty of the plaintiff in

error at the time he purchased it to find out such fact, though there was no possible way under Heaven by which he could possibly have found it out.

It is quite certain that when President Grant approved the deed, through which plaintiff in error claims, that President Grant himself had no means or could not find out that a former deed had also been approved by him, and if President Grant, sitting amidst all the archives in Washington, could not find out such fact, we do not know how the plaintiff in error could be supposed to find it out. Plaintiff in error did all that was possible for him to do, did all which the law requried him to do, he looked in the recorder's office in Illinois where the lands were situated, and he looked in the Department at Washington and found no trace that any such permission had previously been granted to convey the lands, and consequently had a right to believe that he was entitled to purchase them in good faith, and he did so purchase them and obtained the consent of the President to his purchase, and having so done we know of no rule of law or equity by which, upon the record presented at bar, his purchase should not be sustained. We respectfully submit that if the law presented by the case at bar were held to be otherwise than contended for by us in this regard, all the books which have been written upon the subject of the conveyance of real estate, and record titles, and all the decisions emanating from all the courts upon those subjects, would have been written and made in vain. We do not desire to make any lengthened reply argument in this case because we deem all the essential facts and law

to have already been submitted to the court in our original brief.

And we therefore submit the case and respectfully ask a reversal of the judgment of the Supreme Court of the State of Illinois.

JOHN M. H. BURGETT,
Attorney for Plaintiff in Error.

JAMES MAHER,
A. W. BROWNE,
Of Counsel..

No. 123.

DEC 5 1898
JAMES H. McKENNEY,
Clerk.

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Brf. of Ahrens for D. E.

IN THE

Filed Dec. 5, 1898.

Supreme Court of the United States

OCTOBER Term, A. D. 1898.

JOHN A. LOMAX,
Plaintiff in Error.

vs.

AQUILA H. PICKERING,
Defendant in Error.

Error to
Supreme Court
of Illinois.

Brief and Argument for Defendant in Error.

JOHN P. AHRENS,
Attorney for Defendant in Error.

A. B. CASE PRINTING AND PUBLISHING CO., 170 Madison Street, CHICAGO

—IN THE—

Supreme Court of The United States,

OCTOBER Term, A. D. 1898.

JOHN A. LOMAX, *Plaintiff in Error.*	)	Error to
vs.		Supreme Court
AQUILA H. PICKERING, *Defendant in Error.*	)	of Illinois.

Brief and Argument for Defendant in Error.

STATEMENT OF CASE.

MAY IT PLEASE THE COURT:

This was an action of ejectment brought by the defendant in error in the Superior Court of Cook County against plaintiff in error for certain lands in Cook county, which resulted in a judgment in favor of defendant in error for the possession of the property described in the declaration in fee simple, and the plaintiff in error appealed to the Supreme Court of Illinois where the judgment of said Superior Court was affirmed, and the plaintiff in error brings the case to this court by writ of error.

This is the second time the case comes before this Court. When it was here before the judgment was

against the present defendant in error, entered by the Superior Court upon the evidence of the plaintiff below alone, without any evidence being offered on behalf of the defendant below. The judgment of the Superior Court was affirmed by the Supreme Court of Illinois (*Pickering* v. *Lomax*, 120 Ill., 291); but upon a writ of error from the United States Supreme Court, the judgment of the Supreme Court of Illinois was reversed, and the case was remanded to the Superior Court for another trial. *Pickering* v. *Lomax*, 145 U. S., 313.

Upon the second trial in the Superior Court, the plaintiff below offered precisely the same evidence offered by him on the first trial (excepting evidence of tax titles, of which there is none in the present record, and which was not considered by the United States Supreme Court), so that the evidence of the title of defendant in error now before this Court is precisely the same as it was before, and which, the United States Supreme Court held, established a good title in Pickering, the defendant in error.

Upon the second trial in the Superior Court, the defendant below also offered evidence, but the Court held that the defendant's evidence was insufficient to overcome the title of defendant in error, and entered judgment this time in favor of Pickering, the defendant in error as above stated.

The title of defendant in error came through Joseph Robinson, an Indian, and the evidence of it is concisely stated in the opinion of the United States Supreme Court, as follows:

> "In order to establish his title, the plaintiff offered inevidence, Article 4, of the treaty of Prairie du Chien, which so far as the same is material, reads, as follows: 'There shall be granted by the United States to each of the following persons (being descendants

from Indians), the following tracts of land, viz.: To Claude Laframboise, one section of land on the Riviere aux Pleins, adjoining the line of the purchase of 1816; * * * to Alexander Robinson, for himself and children, two sections on the Riviere aux Pleins, above and adjoining the tract herein granted to Claude Laframboise. * * * The tracts of land herein stipulated to be granted, shall never be leased or conveyed by the grantees, or their heirs to any persons whatever, without the permission of the president of the United States.'

"Plaintiff then offered in evidence a copy of the patent issued December 28, 1843, signed by President Tyler, under the provisions of the above treaty, granting the lands, including those in litigation, to Alexander Robinson, for himself and children. The patent also contained the provision: 'But never to be leased or conveyed by him or them, his or their heirs, to any person whatever, without the permission of the president of the United States.' The next instrument in plaintiff's chain of title was a decree in a suit in partition instituted February 22, 1847, in the Cook County Court of Common Pleas, between Alexander Robinson and his children, and evidence to show that the lands in question were set out to Joseph Robinson, one of the children. The following deeds were then put in evidence: Deed, dated August 4, 1858, from Joseph Robinson and wife to John F. Horton, which had indorsed upon it the approval of the president of the United States, which approval was dated January 21, 1871. Deed from Leon Straus, administrator, etc., of the estate of John F. Horton, deceased, to Moses W. Baer, dated October 6, 1863, and made in pursuance of an order of sale by the County Court of Cook County for payment of debts. Several intermediate conveyances of the premises, down to a deed dated November 10, 1866, from Henry H. Dyer and wife to Aquila H. Pickering, the plaintiff."

The above mentioned deed from Joseph Robinson and wife to said Horton was, before its approval by the presi-

dent, recorded in the recorder's office of Cook County, on July 18, 1861, (Rec., 23), and again recorded in said recorder's office, with the approval of the President indorsed thereon on March 12, 1873, (Rec., 27-28.) Plaintiff in error Lomax claims title through a second deed from said Joseph Robinson and wife to one Alexander U. McClure, dated November 22, 1870, conveying the land in question with about 89 acres more of adjoining land (more than twelve years subsequent to the date of the Horton deed), which second deed was approved by the President on February 24, 1871, one month and three days subsequent to the approval of the Horton deed by the president. (Rec., 84-85.)

That the President was misled in approving the McClure deed, is quite apparent from the memoranda attached to that deed. By examining this memoranda (Rec., 80-81), it will be found to consist of an affidavit of one Robert A. Kinzie, sworn to January 26, 1871,— five days after the approval by the President of the Horton deed—stating, in substance, that the McClure deed had been submitted to him, and that he was informed by said Joseph Robinson, and verily believed, that $6,441 were to be paid to said Robinson by said McClure in money; and that affiant believed there could be no injustice or injury done to said grantor in consequence of said conveyance of said land, etc.

Also a plat of the two sections of said Robinson's Reservation, showing the parts set off to the Robinsons respectively, by the partition proceedings above mentioned, and showing a part of that portion set off to said Joseph Robinson to be shaded or colored red. The land in question is included within the colored or shaded part; the parts left unshaded are shown to have been conveyed to

different parties at different times. Under this plat there is the following statement:

> "Diagram of 'Robinson's Reservation' in Cook County, Illinois. The names written in red ink are those to the decree of partition of said tracts in the Cook County Court, May 29, 1848, it being divided among them in five equal portions. The shaded part of Joseph Robinson's portion is intended to be conveyed by the accompanying deed. *Those parts of his portion not shaded have been conveyed by him in other deeds, as noted on this diagram.*
>
> I have examined these statements and maps throughout, and know them to be all correct."
>
> (Signed) JOSEPH ROBINSON.

As already stated, the land in question is included in the shaded part of the diagram, and in the McClure deed, and although this land had been conveyed to Horton more than twelve years before, nothing is said about that conveyance in this specious statement, but by stating that the parts *not shaded had been conveyed*, the natural implication would be that the parts that *were shaded* and intended to be conveyed by the McClure Deed, *had not been previously conveyed*, In other words, by this statement it was very adroitly and deceitfully made to appear to the president that the *shaded part* had not been previously conveyed, notwithstanding the fact that that portion of the shaded part constituting the land in question had been conveyed by said Robinson to Horton more than twelve years before this, and the deed of which had then been approved by the President.

McClure was engineering the scheme, and when he commenced negotiating for the second deed from Robinson, he knew that Robinson had made a prior conveyance of the land. (Rec., 98.) From the foregoing it will be observed that the McClure deed, under which plaintiff in error claims, was executed over twelve years subsequent to the date of the Horton deed, and over nine

years after the Horton deed was recorded in the recorder's office of Cook County; the McClure deed was obtained with full knowledge of and notice to McClure of the prior deed to Horton; the approval of the McClure deed by the president was obtained more than a month after the approval of the Horton deed; and the approval of the McClure deed, it is submitted, was obtained by deceit, or to say the least, by a suppression of the fact of the Horton deed and the approval thereof, by which the president was led to believe, when he approved the McClure deed, that there had been no previous conveyance of that part contained in the McClure deed which was conveyed by the Horton deed.

It is not difficult to see how the president was thus misled. The description of the land in the Horton deed being a long and tedious description by metes and bounds, and the description in the McClure deed being also a long description by metes and bounds, and being different from the description in the Horton deed—because the McClure deed contained about three times as much land as that contained in the Horton deed—it is not at all surprising that the president overlooked the fact that the description in the McClure deed included the land conveyed by the Horton deed.

It is true that the McClure deed, with the approval of the President indorsed thereon, was recorded in the recorder's office of Cook County, before the Horton deed was *re-recorded* with the approval of the president indorsed thereon; and the contention of plaintiff in error is that by reason thereof, and because, as he claims, the partition proceedings were not approved by the President, the title of plaintiff in error is superior to that of defendant in error, while the defendant in error contends that under the former decision of this Court, his title is superior to that of the plaintiff in error.

BRIEF.

I.

The point made by counsel for plaintiff in error that no legal title could be acquired by the defendant in error which came through the proceedings in partition in the Court of Cook County, was passed upon by this Court when the case was here before in favor of defendant in error, and is now *res adjudicata*.

Pickering v. *Lomax*, 145 U. S., 310.

II.

Plaintiff in error and his grantors do not come within the exceptions referred to in the opinion of this Court as to intervening rights of third persons. The subsequent approval by the President of the McClure deed was without legal authority and did not affect the former approval of the Horton deed.

Ex Dem., *Godfrey* v. *Beardsley*, 2 McLean, 412.

Lomax v. *Pickering*, 165 Ill., 431.

Pickering v. *Lomax*, 145 U. S., 310.

III.

It was not necessary to record the President's approval of the Horton deed in the recorder's office of said Cook County at all, and the prior recording of the subsequent approval of the McClure deed did not give it priority over the Horton deed.

Ex Dem. Godfrey v. *Beardsley*, 2 McLean, 412.

United States v. *Schurz*, 102 U. S., 378.

Bicknell v. *Comstock*, 113 U. S., 149.

Gilmore v. *Sapp*, 100 Ill., 297.

Bruner v. *Manlove*, 1 Scam., 156.

20 Am. Eng. Ency. of Law, page 530, and authorities cited.

Rhinehart v. *Schuyler*, 2 Gil., 473.

Grave v. *Bruen*, 1 Gil., 167.

Lomax v. *Pickering*, 165 Ill., 431.

IV.

The question as to whether or not it was necessary, under the recording acts of Illinois to record the approval by the President of the Horton deed, in the recorder's office of Cook County, is not a federal question; and the highest Court of Illinois having decided, in *Lomax* v. *Pickering*, 165 Ill., 431. that it was not necessary to record it, this Court will follow the decision of the Supreme Court of Illinois on this question. In other words, this question involves the construction of a state law, and this Court has frequently decided, that the construction of a state law upon a question affecting the titles to real property in a state by its highest Court, is binding upon the Federal Courts.

Williams v. *Kirtland*, 13 Wal., 306.

Gormley v. *Clark*, 134 U. S., 338.

Bardon v. *Land & River Imp. Co.*, 157 U. S., 327.

Forsyth v. *Hammond*, 166 U. S., 506.

Argument and Brief.

I.

The point made by counsel for plaintiff in error on page 35 of their brief, that no legal title could be acquired by the defendant in error which came through the proceedings in partition in the Court of Cook County, and the deeds made thereunder, defendant in error contends was passed upon by the United States Supreme Court in favor of defendant in error and is now *res adjudicata*.

The United States Supreme Court, it will be remembered, in setting out the chain of title of defendant in error, said (page 311):

"The next instrument in plaintiff's chain of title was a decree in a suit in partition, instituted February 22, 1847, in the Cook County Court of Common Pleas, between Alexander Robinson and his children, and evidence to show that the lands in question were set out to Joseph Robinson, one of the children"; hence the partition proceedings were before this Court and were passed upon and considered sufficient to support the title of defendant in error.

Besides, when the Horton deed was before the President for approval there were attached to it the following documents, viz.:

1. A statement referring to the patent issued to Alexander Robinson, for himself and his children, pursuant to the fourth article of the treaty aforesaid.

2. A statement that on February 22, 1874, Joseph Robinson, a son of Alexander Robinson, filed his petition for partition of said lands, against said Alexander Robin-

son, and against David, Cynthia and Mary Robinson, the remaining children of Alexander Robinson, and by decree entered May 29, 1848, the Court set off and allowed to Joseph Robinson 256 acres, as shown on the following plat, which is attached to the commissioner's report of partition.

3. Then follows said plat showing that the lands in question, with other land, were set off to said Joseph Robinson in said partition proceeding.

4. A statement setting forth and describing said Horton deed, and the land therein described and conveyed.

5. A plat made by Alexander Walcott, county surveyor of Cook county, showing the boundaries of the land in question.

6. A certificate of Jones & Sellers, abstract makers, certifying that there were no conveyances by Joseph Robinson of the land in question recorded in the recorder's office of Cook county, except the Horton deed.

7. Affirmation of Aquila H. Pickering that he is the owner of the land in question, etc.

8. Affidavit of Fernando Jones that he has resided in Cook county since 1835; that he was well acquainted with the value of land throughout Cook county; that he had been shown a certified copy of the Horton deed, and that he believed the consideration named in the deed was all the land in question was worth at the date of the deed. (Rec., 24 to 27.)

Hence, when the Horton deed was before the president he was fully informed of all the matters set forth in the statements and affidavits attached to the deed. He was informed that there had been a partition proceeding whereby the land in question was set off to said Joseph Rob-

inson without the permission or approval of the president —that is, in the statement of those proceedings and the setting off of the land to Joseph Robinson in severalty, attached to the deed, it appears that the partition was without the president's approval; consequently, when President Grant approved the Horton deed, he knew that it was based upon the partition proceeding, and he also knew that the partition so made between Alexander Robinson and his children had never been approved by the president of the United States; therefore, the approval of the Horton deed was in legal effect also an approval of the partition proceedings and of all the acts done thereunder to effect the setting off of the lands in question to said Joseph Robinson.

II.

The position taken by counsel for plaintiff in error that plaintiff in error and his grantors come within the exceptions referred to in the opinion of the United States Supreme Court, as to intervening rights of third persons, is untenable.

The Horton deed had been approved by the president before McClure or Robinson made any effort to have the McClure deed approved, because the affidavit attached to that deed upon which its approval was obtained, was sworn to on a date subsequent to the date of the approval of the Horton deed. Clearly then, any supposed rights under the McClure deed can not be considered as the rights of a third person intervening "between the act and the ratification," within the decision of the United States Supreme Court.

The United States Supreme Court said (145 U. S., page 314):

"The treaty does not provide how or when the permission of the president shall be obtained, and there is certainly nothing which requires that it shall be given before the deed is delivered.

"*Doe* v *Beardsley*, 2 McLean, 412. It is doubtless, as was said by the Supreme Court of Mississippi, in *Harmon* v. *Partier*, 12 S. & M. 425, 427, 'a condition precedent to a *perfect title*' in the grantee; but the neglect in this case to obtain the approval of the president for thirteen years, only shows that for that length of time the *title was imperfect*, and that no action of ejectment would have lain *until the condition was performed*. * * *

"A delay of thirteen years is immaterial, provided, of course, that no third parties have in *the meantime legally acquired an interest* in the lands. If, after executing this deed, Robinson had given another to another person, with the permission of the president; a wholly different question would have arisen. But so far as Robinson and his grantees are concerned the approval of the president *related back to the execution of the deed and validated it from that time*. As was said by this Court in *Cook* v. *Tullis*, 18 Wall, 332-338: 'The ratification operates upon the act ratified precisely as though authority to do the act had been previously given, except where the rights of third parties have intervened *between the act and the ratification*.'"

Now it is clear that the approval of the McClure deed *after* the approval of the Horton deed, did not give plaintiff in error any right under the McClure deed which intervened "*between the act and the ratification*"—that is, which intervened between the *act* of the execution of the Horton deed by Robinson and the *ratification* thereof by the president.

Later in the opinion, the United States Supreme Court says (page 315):

"In *Murray* v. *Wooden*, 17 Wend., 531, a conveyance of land by an Indian, which, subsequent to

its date, had been ratified by a certificate of approbation of the surveyor-general in the form prescribed by law, was held to be inoperative upon the ground that, *previous to the granting of such certificate*, the Indian had conveyed to a third person, and the deed to such person had been approved in the mode prescribed by law, *previous to the endorsement of the certificate of approbation of the deed first executed.* This was a clear case of rights *intervening between the execution of the first deed and its approval.*"

This language, it is respectfully submitted, is a positive condemnation of the McClure deed, as effectually as if there had been an express decision by the Court that the McClure deed was subject to the Horton deed. It holds that the deed *first approved* by the proper authority carries the title, and that the approval takes effect immediately after the indorsement thereof, and relates back to the date of the deed. It shows that to have brought plaintiff in error within the exception as to intervening rights of third persons, mentioned in the opinion of this Court, it was necessary for him to show that the McClure deed was *approved before* the Horton deed was approved. Plaintiff in error, having failed to show this, but on the contrary it appearing affirmatively that the Horton deed was approved *over a month before the approval of the McClure deed*, the Horton deed certainly carried the title through *mesne* conveyances to defendant in error, and therefore no right, title or interest in the land passed through the McClure deed to the plaintiff in error.

This was the view taken by the Supreme Court of Illinois, in this case, *Lomax* v. *Pickering*, 165 Ill.. 431.

That Court, after setting out the respective claims of title of the plaintiff and defendant in error, said (pp. 434-435):

"This is the second time this case has been in this Court. On the first trial in the Superior Court the plaintiff in the action was defeated, and on appeal to this Court we affirmed the judgment. (*Pickering* v. *Lomax*, 120 Ill., 289.) We held under the provision in the treaty and in the patent prohibiting a sale of the premises without the permission of the President of the United States, that the deed made by Robinson without the approval of the President did not pass the title. A Federal question being involved, Pickering, the plaintiff removed the case to the Supreme Court of the United States, where the judgment of this Court was reversed and the cause remanded, the Court holding that the President having approved the deed from Robinson to Horton, thirteen years and six months after it was executed, validated the instrument. (*Pickering* v. *Lomax*, 145 U. S., 313.) Upon the second trial in the Superior Court the plaintiff offered the same evidence offered by him on the first trial, (excepting evidence of tax titles, of which there is none in the present record), so that the evidence of appellee's title now before the Court is precisely the same as it was before. The plaintiffs title resting in the deed from Joseph Robinson to John F. Horton, dated August 3, 1858, and approved by the president January 21, 1871, *having been sustained on the Federal question*, which was the vital question in the case, it now only remains to be determined whether the evidence introduced on the second trial by the defendant, which is now for the first time before the Court, was sufficient to defeat the title of the plaintiff.

"In the opinion of the Supreme Court of the United States it is said: 'If after executing this deed, Robinson had given another to another person, with the permission of the President, a wholly different question would have arisen. But so far as Robinson and his grantees are concerned, the approval of the President related back to the execution of the deed and validated it from that time. As was said by this Court in *Cook* v. *Tullis*, 18 Wall., 332 (338): The ratification operates upon the act ratified precisely as though

authority to do the act had been previously given, except where the rights of third parties have intervened between the act and the ratification. The retroactive efficacy of the ratification is subject to this qualification. The intervening rights of third persons, cannot be defeated by the ratification.' And it is said by appellant that his grantor, McClure, having obtained a deed from Robinson, November 22, 1870, before the deed from Robinson to Horton was approved by the President; he falls within the exception and is entitled to protection. If the McClure deed had been approved by the President before the President approved the deed made to Horton, the position of appellant might be regarded as well taken. But such was not the case. The deed made to McClure, appellant's grantor was not approved, and hence did not become a valid conveyance until February 24, 1871, while in the mean time, and on January 21, 1871, the President approved the Horton deed. Thus the Horton deed under the ruling of the Federal Court became and was a valid conveyance of the land almost a month before the McClure deed was approved and became effectual as a conveyance. Where, as here, two deeds were executed by the same grantor, the deed first approved by the President will carry the title."

Again in the case of *Doe, ex dem. Godfrey* v. *Beardsley*, 2 McLean, 412, which was cited with approval by this Court in *Pickering* v. *Lomax*, *supra*, it was held that where, in a treaty, the lands reserved and granted to individual Indians, cannot be conveyed without the permission of the President, that permission might be given in such form as the President should think proper; and that such permission having been given by the President, his successor could not revoke or annull it.

In that case the Court said (p. 419):

"The second objection that the sanction to the sale given by Mr. Adams, was informal and invalid,

cannot be sustained. Neither the treaty nor any law prescribed the form in which this sanction should be given. The treaty imposed the duty upon the President, and he could execute it in such form and manner as his discretion should dictate. Now where this power is so exercised, how can the form be objected to? Can the judiciary declare the act invalid because the form in which it was done is not exactly in the manner they should have prescribed? The Executive as an independent branch of the Government has the same right to adopt its own forms in the performance of its own duties as the judicial or legislative departments. The law-making power may prescribe the form in which judicial or executive duties shall be done; but where a duty is enjoined, and this is omitted, the discretion of the department as to the mode must be exercised.

"Except by the permission of the President, Pierre Moran could not convey this land. That permission was obtained before the deed was executed. Now whether it would have been more judicious to have withheld the sanction until the execution of the deed, is a matter about which differences of opinion may exist. But whether given before or after the deed, it is equally within the power of the President." * * *

"The last position that the permission given by Mr. Adams, was revoked and annulled by General Jackson, is wholly untenable. Whatever acts may be done under the pretense of reform by the chief Executive, unless such acts depend upon his discretion, and come within his executive duties, they are utterly null and void. They can vest no right nor afford any ground of justification; much less can they divest private interests—interests which have been acquired under the laws of the country. It is difficult to perceive under what pretense this power was attempted to be exercised by General Jackson. He had the same power as his predecessor and no greater. The executive function having been exercised on the subject, the power is exhausted. And this is especially the case where the interest of a third party is involved. Under no notion that the power had

been injudiciously exercised by Mr. Adams, or that Pierre Moran had not made a good bargain, or on any other pretext had Genaral Jackson any right to annull the permission granted. There is indeed one ground, and only one, on which this act might be placed; and that is that it had been inadvertently done without a knowledge of the act of his predecessor. But such a supposition cannot arise, as by the endorsement of General Jackson upon the deed of Beardsley, it seems he had a full knowledge not only of prior permission to convey, but that under it a conveyance had been executed. Indeed evidence of this remained on file in the general land office. This act of General Jackson cannot be placed upon a supposed fraud by Godfrey in obtaining a conveyance from Moran. If fraud existed, the courts were open to investigate it as between Moran and his grantee. It was not a matter which the executive could try. Besides fraud is not to be presumed. That it may be established by *exparte* evidence on inquiry by the Executive, and the rights of a party annulled without notice, would be a principle as new in the law of evidence as it would be singular as a rule of property."

Upon the principle laid down in this case, the subsequent approval by the President of the McClure deed, was absolutely null and void. The power of the President was exhausted when he approved the Horton deed. And, therefore, no claim of title can be set up under the McClure deed. The fact that Robinson told McClure that Horton had not paid for the land is immaterial. The same kind of evidence was offered in the case last cited, and was unavailing. The Court said (p. 415):

"The plaintiff then proved by several witnesses, and by the confession of the defendant, that at the time the deed was executed to him in the office of the Indian agent, and in his presence, Pierre Moran said that he had sold the land to Godfrey, but that he refused to pay him for it, and he would sell it again."

The Court holding, as already shown, that the act of General Jackson in revoking the permission given by a former President, and approving a subsequent deed, could not be placed upon a supposed fraud by Godfrey in obtaining a conveyance from Moran; that if fraud existed, the courts were open to investigate it, as between Moran and his grantee, but that it was not a matter which the executive could try. Hence, if a subsequent President did not have the power to revoke the approval of a deed made by a former President, when that revocation was made with a full knowledge of the former approval, certainly the subsequent approval by President Grant of the McClure deed after approving the Horton deed, and which approval of the McClure deed was evidently the result of an inadvertance, as already shown, the approval of the McClure deed was a mere nullity so far as the land in question is concerned, and the mere recording of such approval in the recorder's office of Cook County, certainly could not make the approval of the McClure deed of any force or effect.

III.

It was not necessary for defendant in error to record the approval of the Horton deed in the recorder's office of Cook County at all. The record of said approval in the department at Washington was, from the date of the approval, notice to all the world that the deed which had been executed by Robinson to Horton, and previously recorded in the recorder's office of Cook County, had been approved, and that such approval related back to the date of the deed.

After the approval of the Horton deed, the President had no power to approve the McClure deed, and the

approval of the McClure deed was absolutely void and of no effect. The recording laws of the State have no application to the question of title between the parties to this cause.

The original patent to the Indians, issued under the treaty in question, was offered in evidence in this case; and it appears therefrom that neither the patent nor the treaty has ever been recorded in the recorder's office of Cook county. So far as the record in Cook County showed, when McClure began negotiations for his deed, no approval of the Horton deed by the President was necessary, because there was nothing of record in the recorder's office showing that the approval of the President was necessary. The record of the Horton deed was constructive notice to the world, and McClure admitted himself, on cross-examination, that he knew that the Indians had made a former deed, at the time he was negotiating for a second deed, as already shown.

It is submitted that the act of the President in approving a deed under the Indian treaty in question, bears the same relation to those Indian lands, as the act of the President does under the acts of congress, to the public lands, in the issuing of patents of said public lands. Hence the same principles and rules of law applicable to the acts of the President and other officers, in relation to the issuing of patents, apply to the acts of the President in approving these Indian deeds.

The position of the defendant in error is, that the President, having approved the Horton deed, had no farther power or authority to approve any subsequent deed of the same land; and that therefore, the approval of the McClure deed as to the lands in question, was absolutely null and void, and did

not affect the rights of defendant in error in the least. By the approval of the Horton deed, as decided by the United States Supreme Court, the Indian title was wholly divested from Robinson, as of the date of the original Horton deed. And the subsequent approval by the President of the McClure deed, could not and did not re-invest the title in the Indian and pass it by the McClure deed.

It was not necessary even for the President to give his approval upon the deed itself, or upon any other paper that could be delivered to the party seeking the approval.

In the case of *Ex Dem. Godfrey* v. *Beardsley*, 2 McLean, 412, the permission was not indorsed upon the deed at all, but upon the petition praying for the permission. It certainly cannot be contended that in that case there was anything to record in the state recorder's office, showing the granting of the permission, because the petition upon which the permission was indorsed became a part of the records of the department at Washington. The approval by the President of the Horton deed passed the Indian title, *by matter of record*, and no delivery of any paper evidencing such approval to appellee was necessary to perfect his title; and consequently, it was not necessary to perfect his title; and consequently, it was not necessary for Mr. Pickering to file for record in the recorder's office of Cook county any document whatsoever, evidencing the approval of the Horton deed by the President.

The record of that approval in the department at Washington was notice to the world of the approval, without any record thereof being made in the recorder's office of Cook county.

It has frequently been decided that when two patents have been issued by the United States government, of the

same land, the elder patent prevails and the second patent is absolutely null and void. Upon the same principle, where there have been two approvals of an Indian deed by the president, of the same land, the elder approval must prevail, and the subsequent approval is absolutely null and void.

In support of these propositions, the attention of the court is respectfully called to the following authorities:

Doe Ex Dem. Godfrey v. *Beardsley*,, 2 McLean, 412, already hereinbefore cited and quoted from.

In *United States* v. *Schurz*, 102 U. S. 378, the court, by Justice Miller, said (p. 397):

> "We are of opinion that when, upon the decision of the proper office that the citizen has become entitled to a patent for a portion of the public lands, such a patent made out in that office is signed by the President, sealed with the seal of the general land office, countersigned by the recorder of the land office, and duly recorded in the book kept for that purpose, it becomes a solemn public act of the government of the United States, and *needs no further delivery or other authentication to make it perfect and valid.* In such cases the title of the land conveyed passes, *by matter of record, to* the grantee, and the *delivery which is required when a deed is made by a private individual, is not necessary to give effect to the granting clause of the instrument.*" * * *
>
> "The patent, in the meaning of the act referred to, is granted to the patentee from its date; *though he may never actually see or receive it*, and is valid and effectual to pass the title to the land." (Page 400.) * * *
>
> "From the very nature of the functions performed by these officers, and from the fact that a transfer of the title from the United States to another owner, follows their favorable action, it must result that at some stage or other of the proceedings their authority in the matter ceases.

"It is equally clear that this period is, at the latest, precisely when the last act in the series essential to the transfer of title has been performed. Whenever this takes place, the land ceased to be the land of the government; or to speak in technical language, the legal title has passed from the government, *and the power of these officers to deal with it has also passed away.* The fact that the evidence of this transfer of title remains in the possession of the land officers *cannot restore the title to the United States, or defeat that of the grantee*, any more than the burning up of a man's title deeds destroys his title." (Page 402.)

In *Bicknell* v. *Comstock*, 113 U. S. 149, the court, by Justice Miller, said (p. 151):

"One of the facts admitted in the case is this:

"It is admitted that on the first day of May, 1869, a patent in due form was executed by the president of the United States, conveying to said Bicknell said lots 3 and 4, which patent was duly recorded in the general land office on the same day at Washington, D. C., and thereupon the original was transmitted to the United States land office at Fort Dodge, Iowa, for said Bicknell.

"In June, 1878, the commissioner of the general land office ordered a return of this patent to his office, and thereupon tore off the seals and erased the president's name from said patent and mutilated the record thereof in the general land office, all without the consent and against the protest of the grantees of said Bicknell. That this action was utterly nugatory and left the patent of 1869 to Bicknell in as full force as if no such attempt to destroy or nullify it had been made, is a necessary inference from the principles established by the Court in the case of *United States* v. *Shurz*, 102 U. S., 378. That principle is that when the patent has been executed by the president and recorded in the general land office, all power of the executive department over it has ceased."

If, in that case, the affirmative intentional act of the officer to revoke the patent by tearing off the seal and erasing the President's name was void, for a much greater reason the apparently inadvertent and unintentional act of the President in approving the McClure deed was void, so far as it related to the land in the Horton deed, and it could not and did not, by implication, revoke the former approval of the Horton deed.

In *Gilmore* v. *Sapp*, 100 Ill., 297, the Court said (page 303):

> "The Supreme Court of the United States has held that when a patent is filled out, countersigned, sealed and recorded in the general land office, the title to the land rests in the person named in the patent, *without a formal delivery of* the instrument, and as this decision relates to a construction of an act of Congress, it is authoritative and binding on all other tribunals. See *United States ex rel* v. *Shurz*, 102 U. S., 379.
>
> "If, then, as held by that Court, the fee simple title vested in Swisher when the patent was recorded, we are aware of no means by which he could be involuntarily deprived of his title except by a judicial proceeding. That is the only means known to the law. The legislative power of the government is not competent to transfer title from one person to another, nor to the government. That is beyond its power. That branch of the government can only declare what acts of the owner may authorize the courts to declare that the title shall be transferred. Hence it follows that legislative authority is incompetent, if it would, to confer such power upon a mere ministerial officer, and any effort by such officer to cancel a patent which transfers title to a grantee, and reinvest the title in the government, is absolutely void, and can affect the rights of no one. Such an officer, under the division of the powers of our government, possesses no such authority, and can be invested with no such functions. The act, then, of the commissioner of the general land office,

"in setting aside and annulling the entry and patent was void, and did not produce the slightest effect on the title of Swisher."

In *Bruner* v. *Manlove*, 1 Scam., 156, the Court said (page 161):

"1st. What is the rule in reference to the conveyance by the government of the United States of its land, where there are two sales and conveyances of the same land to different persons and at different times? * * * On the first point we presume that a patent for land or *any mode of sale adopted by the government* for the disposition of the public domain, must be subject to the same rules of interpretation as ordinary cases. It will not, we apprehend, be for a moment contended to be otherwise. What, then, is the rule where two patents have issued for the same lands to different persons at different times? *The elder patent is the highest evidence of title*, and as long as it remains in force it is conclusive against a junior patent. *The second patent is inoperative and void, if the land passed by the first patent.*"

The act of the President in the approval of these Indian deeds standing upon the same footing as his act in the issuing of patents of the public lands, it follows that the registry laws of Illinois have no application whatever to the approval of these deeds by the president. In other words, such recording acts do not require the recording in the recorder's office of any evidence of such approval. And the recording of the McClure deed, approved as aforesaid, prior to the re-recording of the Horton deed, with the approval of the President thereon, is wholly immaterial in this case. It was not necessary for defendant in error to have recorded his copy, approved as aforesaid, at all. The approval of the Horton deed rests upon the same basis as a deed or

patent emanating directly from the United States; and it has been decided by the Supreme Court of Illinois and numerous other courts, that the registry laws of the several States do not apply to patents or deeds emanating directly from the United States.

In 20 Am. & Eng. Ency. of Law, page 530, the writer says:

> "Patents of land from the United States do not come within the purview of the recording laws of the different States when the terms employed do not specially include them. The original record in the general land office, from which patents are issued, has been held to give notice to the world of their existence." Citing,
>
> *Curtis* v. *Hunting*, 6 Iowa, 536.
> *David* v. *Rickabaugh*, 32 Iowa, 540.
> *Rhinehard* v. *Schuyler*, 7 Ill., 473.
> *Moran* v. *Palmer*, 13 Mich., 367.
> *Sands* v. *Davis*, 40 Mich., 14.
> *Evitts* v. *Roth*, 61 Tex., 81.
> *Stevens* v. *Geiser*, 71 Tex., 140.

In *Rhinehart* v. *Schuyler*. 2 Gil., 473, the Court said (p. 523):

> "In regard to the first objection, that the auditor's deed should not have been permitted to have been read to the jury, without preliminary proof of its execution, it is only necessary to say that our registry laws do not apply to patents or deeds emanating directly from the State or the United States."

In *Graves* v. *Bruen*, 1 Gil., 167, the Court said (p. 172):

> "It is hardly necessary to say that the registry acts do not apply to patents emanating from either the State or the United States. In case of loss of the

> original patent, a copy from the record would not be admissible as secondary evidence to supply its place, and would be of no effect for that purpose. It is necessary in such cases to obtain a duplicate patent from the authority which issued the first patent. The registry laws have no application whatever in such case."

That this case does not come within *Wilcox* v. *Jackson*, 13 Pet., 498, cited in the brief of plaintiff in error is shown by the opinion of the United States Supreme Court in this case, because, although the patent was issued in accordance with the Indian treaty, and although the Illinois Supreme Court, applying the laws of Illinois to the case, decided that appellee had no title, the United States Supreme Court applied the Federal laws to the case and reversed the judgment of the Supreme Court of Illinois.

The title to the land in question, which had once been the property of the United States, did not pass absolutely by the patent to Alexander Robinson and his children.

The United States still retained a control over the land, by providing in the patent that said Robinsons should not convey the lands without the permission of the President of the United States; and consequently, the effect of the approval of the deeds in question must be resolved by the laws of the United States. In other words, the title to the lands in question did not pass from the United States by the patent to the Robinsons in such a sense as to make the approval by the president of a deed, given by the Robinsons under the patent, subject to the recording laws of this State.

The cases cited in the brief of plaintiff in error as to void instruments, can have no bearing on this case against

the defendant in error, but on the contrary show that the recording of the McClure deed did not give it any force or effect, because the subsequent approval of it by the President was absolutely null and void, as above shown. The United States Supreme Court held that an imperfect title passed by the Horton deed, which became perfect as of the date of the deed upon the approval of the deed by the President. The Horton deed, therefore, even before its approval by the President was not a void instrument.

It was a deed, conveying, it is true, an imperfect title, but still conveying a title which would become perfect by the subsequent approval of the deed by the President of the United States. Therefore the recording of the Horton deed in 1861, in the recorder's office of Cook county was notice to all the world, that Joseph Robinson had done all that he could do to pass the title to Horton, and it was further notice to all the world that as soon as the record in Washington should show that the president had approved the deed, the imperfect title passed by the Horton deed would become perfect, as of the date of the Horton deed.

The place for persons seeking to procure a second deed from the Indian, to look for the purpose of ascertaining whether or not the first deed had been approved, was the record in Washington, and not the record of the recorder's office of the county where the land was situated.

The question of *laches*, suggested by counsel for plaintiff in error does not enter into this case, because, as already shown, defendant in error had obtained the President's approval of the Horton deed *before* McClure had taken any steps to procure the approval of the McClure deed.

IV.

It is respectfully submitted, that the contention of counsel for plaintiff in error, that there is nothing in this record to show when the approval by the President of the Horton deed became a matter of record in the department at Washington, can not be sustained. The fact, that the certificate of the officer certifying to the copy of the record bears a late date is immaterial. The copy of the record is properly certified to be a correct copy, and that shows upon its face that the Horton deed was approved by the President January 21, 1871, and it necessarily follows that that was the date of the record of such approval in the department at Washington.

The defendant in error offered in evidence a certified copy showing the Horton deed, the certificate of the recorder of Cook County certifying it to be a true copy of the record of a certain instrument filed in his office on the 18th day of July, 1861, and also showing as attached to the deed a certificate and plat of Jones & Sellers, an affidavit of Aquila H. Pickering, an affidavit of Fernando Jones, the submission thereof to the Secretary of the Interior, on January 6, 1871, the submission thereof to the President on January 21, and the approval thereof by the President on the 21st day of January, 1871. (Rec., 21-27.)

All of which is certified to, under the date of March 7, 1896, by the Commissioner of Indian affairs, that the same "is a true copy of the certified copy of the original deed as the same appears of record in this office." (Rec., 21-22.)

Now, counsel for plaintiff in error contend, that because the certificate of the Commissioner of Indian Affairs,

is dated March 7, 1896, there is no evidence in this record that there was any record in the department at Washington before that time of the approval by the President of the Horton deed. This is clearly a misapprehension, because when, on January 6, 1871, the certified copy was submitted to the Secretary of the Interior, that submission became a matter of record in the department on that day, and when on January 21, 1871, it was submitted to the President and approved by him, such approval became a matter of record on that day. The copy of the record shows on its face when the record was made, and the proper officer certifies to the correctness of the copy. The date of the officer's certificate merely shows when the copy was made, and so long as the copy is correct, it certainly is immaterial whether the copy was made on the same day that the record itself is made or afterwards. It was not for the officer to certify as to when the record was made. The record speaks for itself, and the officer certifies that the copy of the record made by him is correct.

If this were not so, there would be no way of establishing the date of any public record, because it certainly would not be competent to prove the date of a record by parol.

It is respectfully submitted that the only question in the present case which was not decided by this Court when the case was here before, is as to the application of the recording laws of Illinois to the approval by the President of the Horton and McClure deeds. In other words, whether or not, under said recording laws, the recording in the recorder's office of Cook County of the approval by the president of the McClure deed, prior to the recording of the approval by the president of the Horton deed

had the effect of making the title of plaintiff in error derived under the McClure deed, prior to the title of the defendant in error, derived under the Horton deed.

The Supreme Court of Illinois has decided that as respects the approval of the President required by the treaty and the provisions of the patent to render the deed effectual, the recording laws have no bearing upon it.

Lomax v. *Pickering*, 165 Ill., 431.

This question involves the construction of a state law, and this Court has frequently decided that the construction of a state law upon a question affecting the titles to real property in the state by its highest Court is binding upon the Federal Courts.

Williams v. *Kirtland*, 13 Wall., 306.

Gormley v. *Clark*, 134 U. S., 338.

Bardon v. *Land & River Imp. Co.*, 157 U. S., 327.

Forsyth v. *Hammond*, 166 U. S., 506.

In the last decision of this case by the Supreme Court of Illinois, *Lomax* v. *Pickering*, 165 Ill., 431, the Court said (435-437.):

> "But it is said, the McClure deed is entitled to priority under the recording laws of the State. Section 28 of our Statute, entitled 'conveyances' provides that 'deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this State shall be recorded in the County in which such real estate is situated.' By section 30 of the same act it is provided: 'All deeds, mortgages and other instruments in writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record and not before, as to all creditors and subsequent purchasers without notice; and all such deeds and title papers shall be

adjudged void as to all such creditors and subsequent purchasers without notice until the same shall be filed for record.' Here the McClure deed under which appellant claims, with the approval of the President endorsed thereon, was recorded in the recorder's office of Cook County, March 11, 1871, while the Horton deed, containing the approval of the President, was not recorded until March 12, 1873, and it is contended that the deed first recorded bearing the approval of the President will take priority over the other deed recorded at a later date.

As respects the approval of the President required by the treaty and the provisions in the patent to render the deed effectual, we do not think the recording laws have any bearing upon it. There was a record of the approval of the President in the department at Washington, and that record was notice to all concerned from the time it was made, and we do not think the recording laws of the state required a copy of that record to be recorded in the recorder's office where the land is located. A record of that character is similar to a patent issued by the President for lands that belong to the government, which is not required to be recorded in the county where the land is located. In the American and English Encyclopedia of Law (vol. 20, p. 530), the author says: 'Patents of land from the United States do not come within the purview of the recording laws of the different states when the terms employed do not specially include them. The original record in the general land office, from which patents are issued, has been held to give notice to the world of their existence' (citing Illinois decisions and decisions from other states.)

"It was not necessary that the approval of the President should be endorsed on the deed. The approval might have been endorsed on a petition presented to him for his approval, or he might have made a record of the application, with his approval, without endorsing it on any paper. The record made in the department would be the evidence of the fact."

Here then, the highest court of the State of Illinois, has decided, that the recording acts of Illinois have no application whatever to the approval by the President of the Horton deed. In other words, that it was not necessary to record the approval by the President of the Horton deed in the recorders's office of Cook County at all; and therefore the highest court of the State having thus placed a construction upon a State law affecting the title to land in the State, this court will follow the decision of the highest State court on that question, as will appear by a review of the cases above cited, namely:

In *Williams* v. *Kirkland*, 13 Wall 306 the validity of a tax deed was in question, under the provisions of a State statute and this court said (p. 311.)

> "This construction of a State law upon a question affecting the titles to real property in the State by its highest court, is binding upon the Federal Courts."

Gormley v. *Clark*, 134 U. S., 338, was a suit brought under the "Burnt Records Act" of Illinois, and the Court said (p. 348):

> "Upon the construction of the constitution and laws of a State, this Court, as a general rule, follows the decisions of her highest court, unless they conflict with or impair the efficacy of some provision of the Federal constitution, or of a Federal statute, or a rule of general commercial law. *Norton* v. *Shelby County*, 118 U. S., 425, 439, and this is so where a course of those decisions, whether founded on statutes or not, have become rules of property within the state; also in regard to rules of evidence in actions at law; and also in reference to the common law of the State, and its laws and customs of a local character when established by repeated decisions. *Burgess* v. *Seligman*, 107 U. S., 20; *Bucher* v. *Cheshire R. R. Co.*, 125 U. S., 555. Substantially conclusive effect is given to such decisions upon the construction of State statutes, as affecting title to

real estate within the State. *Ridings* v. *Johnson*, 128 U. S., 212; *Bacon* v. *North Western Ins. Co.*, 131 U. S., 258; *Hanrick* v. *Patrick*, 119 U. S., 156, 169."

In *Bardon* v. *Land and River Improvement Company*, 157 U. S., 327, one of the questions was as to the construction of the recording acts of Wisconsin, and this court held that it was bound by the construction placed thereon by the Supreme Court of Wisconsin.

This Court said (p. 338):

> "We entirely concur in the ruling of the Supreme Court of Wisconsin and *it is decisive of the question made.*"

In *Forsyth* v. *Hammond*, 166 U. S., 506, this Court said (pp. 518-519):

> "The construction by the Courts of a State of its constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a State has misconstrued its constitution or its statutes, but we are not at liberty to therefore set aside its judgments. That Court is the final arbiter as to such questions" (citing many authorities.)

Such being the case, and the decision of the Supreme Court of Illinois in this case being in entire conformity with the former decision of this Court, it is difficult for counsel for defendant in error to perceive that there is now any federal question involved in the case; but be that as it may, it is respectfully submitted that the decision of the Supreme Court of Illinois in favor of defendant in error is right and should be affirmed.

Respectfully submitted.

JOHN P. AHRENS,
Attorney for Defendant in Error.

Counsel for Parties.

LOMAX *v.* PICKERING.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 123. Submitted January 12, 1899. — Decided February 20, 1899.

A record in the Department at Washington of the approval by the President of a deed made by an Indian to convey lands held by him subject to the provision in the treaty of Prairie du Chien that it was never to be leased or conveyed without the permission of the President, is notice to all concerned from the time it was made, and is similar, in effect, to a patent issued by the President for lands that belong to the Government, which is not required to be recorded in the county where the land is located.

The recording of a deed of such land, made without previous approval of the President, is notice of the grantee's title to subsequent purchasers; and, when approved, operates to divest the title of the grantor as against a subsequent grantee.

THIS was an action of ejectment brought by Aquila H. Pickering against John A. Lomax and William Kolze to recover possession of two parcels of land in Cook County, Illinois, which had originally been granted by the United States to certain Indians under the treaty of Prairie du Chien, of July 29, 1829.

This case was before this court upon a former hearing, *Pickering* v. *Lomax*, 145 U. S. 310, the report of which contains a full statement of the facts, which need not be here repeated. Upon that hearing the judgment of the Supreme Court of Illinois was reversed, and the case remanded for a new trial, which resulted in a judgment for Pickering, the plaintiff, and in an affirmance of that judgment by the Supreme Court of Illinois. *Lomax* v. *Pickering*, 165 Illinois, 431. To review this judgment a second writ of error was sued out from this court.

Mr. John M. H. Burgett for plaintiff in error. *Mr. James Maher* and *Mr. A. W. Browne* were on his brief.

Mr. John P. Ahrens for defendant in error.

Opinion of the Court.

MR. JUSTICE BROWN, after making the above statement, delivered the opinion of the court.

The common source of title in this case was Alexander Robinson, an Indian, to whom the lands were patented by President Tyler, December 28, 1843, under the provisions of Art. IV of the treaty of Prairie du Chien, 7 Stat. 320, subject to the following proviso: "But never to be leased or conveyed by him," (the grantee,) "them, his or their heirs, to any person whatever, without the permission of the President of the United States." The lands were subsequently allotted and set off to Joseph Robinson, one of the patentee's children, by a decree in partition of the Cook County Court of Common Pleas.

Pickering claimed title through a deed from Joseph Robinson and wife to John F. Horton, dated August 3, 1858, recorded July 16, 1861, but without the approval of the President endorsed thereon. The deed was, however, submitted to and approved by the President, January 21, 1871, and a certified copy of the deed with such approval recorded March 12, 1873.

Lomax's title was by deed from Joseph Robinson to Alexander McClure, dated November 22, 1870, submitted to and approved by the President, February 24, 1871, and recorded March 11, 1871, in Cook County.

Upon the first trial, plaintiff's chain of title being proved the defendant Lomax introduced no evidence, but at the close of plaintiff's testimony moved that the case be dismissed upon the ground that the deed of August 3, 1858, from Joseph Robinson and wife to Horton was made in direct violation of the terms of the patent, which required the approval of the President to the conveyance. This motion was granted, the court being of opinion that Robinson had no authority to convey without obtaining prior permission of the President, and that the subsequent approval of the deed was invalid. Thereupon judgment was rendered for the defendant, which was affirmed by the Supreme Court of Illinois. 120 Illinois, 289, 293.

The case was reversed by this court upon the ground that

the approval subsequently given by the President to the conveyance was retroactive, and was equivalent to permission before execution and delivery. The case went back for a new trial, when Lomax put in evidence the title above stated, relying upon a sentence in the opinion of this court to the effect that "if, after executing this deed, Robinson had given another to another person with the permission of the President, a wholly different question would have arisen." Judgment having been rendered for the plaintiff, the case was again taken to the Supreme Court of the State, which was of opinion that the defendant did not stand in the relation of a *bona fide* purchaser to the property.

It will be observed that the deed to Horton of August 3, 1858, antedated the deed to McClure of February 22, 1870, by more than twelve years, and was recorded July 16, 1861, while the deed to McClure was recorded March 11, 1871, nearly ten years thereafter. The deed to Horton also antedated the deed to McClure in the approval of the President by about a month, viz.: Horton, January 21, 1871; McClure, February 24, 1871.

Defendant, however, relies upon the fact that the McClure deed was recorded with the approval of the President endorsed thereon March 11, 1871, while plaintiff's deed with such approval was not recorded until March 12, 1873. The real question then is whether the recording of the Horton deed of July 16, 1861, without the approval of the President endorsed thereon, was notice of plaintiff's title to subsequent purchasers.

By section 30 of the conveyancing act of Illinois, it is provided that "all deeds, mortgages and other instruments in writing which are authorized to be recorded shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice, and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers without notice until the same shall be filed for record."

The Supreme Court of Illinois was of opinion that the deed to Horton was entitled to record, although it had not received

the approval of the President. In delivering the opinion of the court Mr. Justice Craig observed: "As respects the approval of the President, required by the treaty and the provision in the patent to render the deed effectual, we do not think the recording laws have any bearing upon it. There was a record of the approval of the President in the Department at Washington, and that record was notice to all concerned from the time it was made, and we do not think the recording laws of the State require a copy of that record to be recorded in the recorder's office where the land is located. A record of that character is similar to a patent issued by the President for lands that belong to the Government, which is not required to be recorded in the county where the land is located."

Even if this be not a construction of the state statute binding upon us, and decisive of the case, we regard it as a correct exposition of the law.

The deed is an ordinary warranty deed upon its face, signed by the parties, and regularly acknowledged before a justice of the peace. There was nothing to apprise the recorder of any want of authority to convey, or to justify him in refusing to put the deed on record. Whether the grantors had authority to make the deed as between themselves and the grantees, or subsequent purchasers, is a matter which did not concern him. Though the deed might be impeached by showing that the grantor had no such authority, the record was notice to subsequent purchasers that they had at least attempted to convey their interests.

A deed may be void by reason of the infancy or coverture of the grantors, and yet may be, under the laws of the State, entitled to record and notice to subsequent purchasers. While the record of a void deed is of no greater effect than the deed itself, and is not such notice as will give protection to a *bona fide* purchaser, yet it may, under certain circumstances, be a notice to intending purchasers, or third persons, that the grantor has intended and undertaken to convey his title. Thus, in *Morrison* v. *Brown*, 83 Illinois, 562, a deed of trust executed by a married woman, her husband not uniting therein,

to secure the purchase money of the property, though void as a conveyance, was nevertheless held to be an instrument in writing relating to real estate within the statute of Illinois, and, when recorded, constructive notice to all subsequent purchasers of the lien of the original vendor upon the same for the unpaid price. The court took the ground that while married women had no force or power to *create* a lien, subsequent purchasers occupied the same position as they would have done had the instrument been read to them before they became interested in the question.

So, in *Tefft* v. *Munson*, 57 N. Y. 97, the record of a mortgage prior to the acquisition of title by the grantor was held to be constructive notice to a subsequent purchaser in good faith, and under the recording act, giving it priority to the title. See also *United States Ins. Co.* v. *Shriver*, 3 Md. Ch. 381; *Alderson* v. *Ames*, 6 Maryland, 52; *Stevens* v. *Hampton*, 46 Missouri, 404.

In this case however, it appears from McClure's own statement that when Robinson came to him in 1870 to sell him his right to the land, he told him that he had already sold the premises, but without the approval of the President, and that McClure sent his own attorneys to examine the record. He thus had not only constructive but actual notice of the Horton deed.

The approval of the President was no proper part of the deed. The language of the restriction in the original patent was "but never to be leased or conveyed by him, [the grantee,] them, his or their heirs, to any person whatever, without the permission of the President of the United States." How that permission should be obtained or expressed is left undetermined by the proviso. We see no reason why it might not have been by a memorandum at the foot of the petition for approval, or even by a letter to that effect. The essential fact was that permission should be obtained and expressed in some form, of which, in all probability, a record was kept in the Department.

Indeed, we think it sufficiently appears that at the time the deed to McClure was approved by the President, February 24,

1871, there was on file in Washington the approval of the President of the prior deed to Horton. There was put in evidence a certificate of the Commissioner of Indian Affairs, signed March 7, 1896, to a certified copy of the Horton deed, with an affidavit as to the loss of the original, a further affidavit that the sale was an advantageous one for Robinson, and the approval of the President, dated January 21, 1871. It does not directly appear when the approval of the President was put on file in the office of the Commissioner, but we think the presumption is that it was filed as of its date. There was nothing requiring that this approval should be filed in the recorder's office in Cook County, and when McClure took his deed of November 22, 1870, and obtained the approval of the President of February 24, 1871, he took it with the chance that the Horton deed had already been approved, and that the power of the President had been exhausted. The approval by the President of his deed was doubtless an inadvertence, and, in view of the fact that he had already approved the Horton deed, a nullity. By his approval of the first deed the title of Robinson was wholly divested, and there was nothing left upon which a subsequent approval could operate, unless we are to assume that such subsequent approval in some way revested the title in Robinson and passed it to McClure. No new delivery was necessary to pass the title to Horton. *United States* v. *Schurz*, 102 U. S. 378; *Bicknell* v. *Comstock*, 113 U. S. 149; *Gilmore* v. *Sapp*, 100 Illinois, 297; *Bruner* v. *Manlove*, 1 Scam. 156. No injustice was done to McClure, since he already had notice, both by the record and by Robinson's statement, that he had conveyed the land, and an examination of the record in Washington would doubtless have shown that the prior deed had received the approval of the President. The two deeds stand in the relation of two patents for the same land, the second of which is uniformly held to be void.

There is nothing in the fact that the partition proceedings, under which Robinson obtained title to the land in dispute, were not approved by the President. Not only were these partition proceedings set forth as a part of the record of the case at the time he approved the Horton deed, but as already

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held in the prior case, (p. 316,) such approval was retroactive, and operated as if it had been endorsed upon the deed when originally given, and enured to the benefit of Horton and his grantee, "not as a new title acquired by a warrantor subsequent to his deed enures to the benefit of the grantee, but as a deed imperfect when executed, may be made perfect as of the date when it was delivered."

The judgment of the Supreme Court of Illinois is therefore

Affirmed.